

(27,330)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 575.

ANCHOR OIL COMPANY, APPELLANT,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript from U. S. circuit court of appeals.....	a	1
Transcript from the State court.....	2	2
Petition	2	2
Exhibit "A"—Allotment deed, Creek Nation to Jennie Samuel	16	14
"B"—Homestead deed, Creek Nation to Jennie Samuel	17	15
"C"—Oil and gas lease, Robert Rogers and Feney Rogers to J. P. Williams, dated December 6, 1915.....	18	16
"D"—Order approving oil and gas lease by county court, December 14, 1915....	20	18
"E"—Assignment, oil and gas lease, J. P. Williams to Western Rope and Cordage Company, dated December 23, 1915..	22	20
"F"—Quitclaim deed, Lina White, née Lowe, née Billie, to Feney Rogers, dated November 30, 1915.....	24	21

	Original.	Print.
Exhibit "G"—Order of county court approving deed from Lina White, née Lowe, née Billie, to Feney Rogers, dated December 14, 1915.....	25	23
"H"—Oil and gas mining lease, S. W. Brown, guardian of Lula Love, née Billie, to J. P. Williams, dated December 27, 1915	27	25
"I"—Order of county court approving above lease, dated December 27, 1915.....	31	29
"J"—Assignment of oil and gas lease, J. P. Williams to Western Rope and Cordage Company, dated January 4, 1916.	32	30
"K"—Assignment of oil and gas lease, J. P. Williams to Western Rope and Cordage Company, dated March 7, 1916..	34	31
Præcipe for summons.....	36	33
Summons and return.....	37	34
Notice for application for receiver.....	40	38
Notice of petition and bond for order of removal.....	41	39
Petition for removal.....	42	40
Bond on removal.....	48	45
Order of removal.....	49	47
Certificate of clerk.....	50	48
Motion to remand.....	50	48
Motion to dismiss.....	52	50
Order overruling motion to remand and submitting motion to dismiss	52	50
Motion of Gulf Pipe Line Co. to dismiss.....	53	50
Stipulation, amendment to petition to be considered a part of the original bill.....	53	51
Amendment to petition.....	54	51
Exhibit "X"—Notice, Anchor Oil Company to F. D. McDonnell and Charles Egan, dated July 28, 1916.....	55	52
Exhibit "Y"—Oil and gas mining lease, Jennie Samuels to F. D. McDonnell and Charles Egan, dated December 5, 1914.....	56	53
Memorandum decision.....	63	59
Order sustaining motions to dismiss and dismissing bill.....	65	60
Petition for appeal.....	66	61
Assignment of errors.....	66	62
Citation with acceptance of service.....	68	63
Præcipe for record.....	68	63
Election as to printing record.....	69	64
Clerk's certificate.....	70	65
Proceedings had in the circuit court of appeals.....	71	66
Appearance of Mr. George T. Brown and Mr. John B. Meserve as counsel for appellant.....	71	66
Appearance of Mr. C. S. Walker, Mr. Rush Greenslade, Mr. William C. Leidtke, and Messrs. West, Sherman, Davidson & Moore as counsel for appellees.....	71	66

INDEX.

iii

	Original.	Print.
Appearance of Mr. James B. Diggs as counsel for ap- pellees	72	67
Appearance of Mr. C. P. Chenault as counsel for appel- lant	72	67
Order of submission.....	72	67
Opinion, U. S. circuit court of appeals.....	73	67
Decree, U. S. circuit court of appeals.....	82	74
Petition for appeal to Supreme Court U. S. and order allow- ing same.....	82	74
Assignment of errors on appeal to Supreme Court U. S.....	83	75
Bond on appeal to Supreme Court U. S.....	85	76
Citation on appeal to Supreme Court U. S. and acceptance of service.....	87	77
Clerk's certificate to transcript.....	88	78

a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1918, of said Court, before the Honorable Walter H. Sanborn and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Jacob Trieber, District Judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest:

E. E. KOCH,
*Clerk of the United States Circuit Court of
Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to-wit: on the seventh day of June, A. D. 1918, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma was filed in the office of the Clerk of the United States Court of Appeals for the Eighth Circuit, in a certain cause wherein the Anchor Oil Company, a corporation, was Appellant, and W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a corporation, were Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

1 In the United States District Court for the Eastern District of Oklahoma.

Pleas and Proceedings before the Honorable Ralph E. Campbell, Judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

Equity. No. 2385.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS
and THE GULF PIPE LINE COMPANY, a Corporation, Defendants.

ANCHOR OIL COMPANY, Appellant,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS
and THE GULF PIPE LINE COMPANY, a Corporation, Appellees.

Be it remembered, that this cause was begun in the Superior Court in and for Tulsa County, State of Oklahoma, and came to this Court on Petition, Order and Bond for Removal. On the 21st day

of February, A. D. 1917, the same was entered on the dockets of this court and given No. 2385, equity.

The transcript from the Superior Court in and for Talsa County, State of Oklahoma, is in words and figures as follows:

2 In the Superior Court within and for the County of Tulsa,
State of Oklahoma.

No. 4241.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

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W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS
and THE GULF PIPE LINE COMPANY, a Corporation, Defendants.

Transcript.

Be it remembered, that heretofore, to-wit, on the 18th day of January, 1917, the plaintiff herein, Anchor Oil Company, a Corporation, commenced its action against the above named defendants W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings, and The Gulf Pipe Line Company, a Corporation, by filing in the Superior Court within and for the County of Tulsa, State of Oklahoma its Petition.

Which said Petition, together with all endorsements thereon, is in the words and figures following, to-wit:

STATE OF OKLAHOMA.

County of Tulsa, ss:

In the Superior Court,

Civil. No. 4241.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

52.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDING
and THE GULF PIPE LINE COMPANY, a Corporation, Defendants.

Petition.

First Paragraph.

Comes now the plaintiff, Anchor Line Oil Company, a corporation and for the first cause of action against the above named defendant alleges and states:

That it is a corporation duly organized under the laws of the State of Oklahoma, with full power to contract, and be contracted with, sue and be sued, and was such corporation at all the times hereinafter mentioned, with its principal office and place of business at Tulsa, Tulsa County, Oklahoma; that plaintiff is informed and believes, and so charges the fact to be, that the defendants, W. H. Gray, F. D. McDonnell and F. C. Giddings, are citizens and residents of Tulsa County, Oklahoma; and that Charles Egan is a citizen and resident of Creek County, Oklahoma; and that the Gulf Pipe Line Company of Oklahoma is a corporation duly organized under the laws of the State of Oklahoma, with full power and authority to conduct business in the State of Oklahoma, and with full power to contract and be contracted with, sue and be sued, and at the times herein mentioned said defendant corporation was engaged and is now engaged in the transaction of business in Tulsa County, State of Oklahoma.

3 The plaintiff, Anchor Oil Company, says that it is now the owner of the right to enter, prospect and develop and take and transport oil and gas from and under the following described land, to wit:

1. The North Sixty (6) Acres of the East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty Six (36), Township Eighteen (18) North, Range Twelve (12) East, land situated in Tulsa County, Okla.; and otherwise described as the Northeast Quarter (N. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty Six (36), Township Eighteen (18) North, Range Twelve (12) East, in Tulsa County, Oklahoma, and the North Half (N. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty Six (36), Township Eighteen (18) North, Range Twelve (12) East in Tulsa County, Oklahoma.

2. The South Half (S. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty Six (36), Township Eighteen (18) North, Range Twelve (12) East, land situated in Tulsa County, Oklahoma.

And plaintiff says that it is now the owner of a certain oil and gas lease on the above described premises and of the oil and gas mining leasehold estate in and to the above described land, and acquired its said title and ownership thereto as follows, to wit:

Plaintiff, Anchor Oil Company, says that one, Jennie Samuels, was a full-blood citizen of the Creek Tribe or Nation of Indians, duly enrolled as such opposite Roll No. 5941; that the above described lands, together with other lands, were duly allotted to her by the Commission to the Five Civilized Tribes on the 28th day of August, 1903, and that the Creek Nation duly conveyed the same to her by a Surplus Allotment Deed dated August 28, 1903, a copy of which deed is filed herewith as a part hereof and marked "Exhibit A," and by homestead deed dated August 28, 1903, a copy of which deed is filed herewith as a part hereof and marked "Exhibit B"; and plaintiff says that said allotment deeds were issued to Jennie Samuels

during her lifetime and were and are filed for record October 6, 1903, in the office of the Commissioner to the Five Civilized Tribes (Dawes Commission) at Muskogee, Oklahoma, and recorded in Book 17, page 80, and Book Q, page 80, respectively.

Plaintiff says that said Jennie Samuels died intestate on the 11th day of October, 1915, and that at that time her permanent residence was, and for a long time prior thereto had been, in Creek County,

Oklahoma; that she left surviving her as her only heirs at law, 4 Feney Rogers, nee Sarkachee, her daughter, who was at the times herein mentioned of full and legal age, being over Eighteen (18) years of age, and also a full-blood Creek Indian, duly enrolled as such opposite Roll No. 5939; and one other heir, Lina White, formerly Lina Lowe, nee Billie, who is likewise a full-blood Creek Indian, and, at the times hereinafter mentioned, was a duly adjudged incompetent, and that Sam W. Brown was her duly appointed, qualified and acting guardian; that said Lina White was a granddaughter of said Jennie Samuels, deceased; and that upon the death of said Jennie Samuels aforesaid, said lands thereupon descended to her said heirs as above named, free and clear of all restrictions against alienation, by virtue of the terms and provisions of the Act of Congress of May 27, 1908.

The plaintiff, Anchor Oil Company, says that on the 6th day of December, 1915, the said Feney Rogers and her husband, Robert Rogers, made, executed and delivered, for a valuable consideration, to J. P. Williams a certain oil and gas lease, by the terms of which they granted, demised, leased and let unto said J. P. Williams, his successors, heirs and assigns, for the sole and only purpose of mining and operating for oil and gas and of laying pipe lines and of building tanks, power stations and structures thereon, to produce and take care of said products, all that certain tract of land situated in the County of Creek and County of Tulsa in the State of Oklahoma, as follow, to wit:

The Southwest Quarter (S. W. 4) of the Southwest Quarter (S. W. 4) of Section Eight (8), Township Eighteen (18) North, Range Twelve (12) East, in Creek County, Oklahoma, and the East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-Six (36), Township Eighteen (18) North, Range Twelve (12) East, in Tulsa County, Oklahoma, containing in all One Hundred Twenty (120) Acres, more or less;

on the following terms and conditions, to wit:

(a) That said lease should remain in force for a term of one (1) year from date thereof and as long as oil or gas, or either of them, is produced on said premises.

(b) By the terms of said lease J. P. Williams, his heirs and assigns, agreed to deliver to Robert Rogers and Feney Rogers, their heirs or assigns, free of cost in the pipe line to which wells may be connected, the equal one-eighth ($\frac{1}{8}$) part of all oil produced and saved from the premises.

5 (c) To pay to said Robert Rogers and Feney Rogers, One Hundred Fifty Dollars (\$150.00) each year in advance for

the gas from each well, where gas only is found while the same is being used off the premises.

(d) To pay the said Robert Rogers and Fency Rogers for gas produced from any oil well at the rate of * * * Dollars per year for the time during which said gas shall be so used, said payment to be made each three months in advance.

(e) Said J. P. Williams, his heirs and assigns, by the terms of said lease agreed to commence a well on said premises within six (6) months of the date of said lease, to wit, from and after the 6th day of December, 1915, or pay in advance Ten Dollars (\$10.00) per month for each additional month said commencement or completion of well is delayed from the time above mentioned for the commencement or completion of such a well until a well was or is commenced or completed; and it was agreed that the completion of such a well should be and operate as a full liquidation of all rent under this provision during the remainder of the term of said lease.

(f) Said J. P. Williams, his heirs and assigns of said lease, had the right to use free of cost gas and water produced on said land for operations thereon, and said Williams agreed to pay for damage caused to growing crops on said land.

(g) By the terms of said lease it was agreed and understood between the parties that said J. P. Williams, his heirs and assigns, should not be bound by any change in ownership of the land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance or by receipt of the original instrument of conveyance or a dully certified copy thereof.

(h) By the terms of said lease it was agreed between said parties that all payment which may fall due under said lease may be made directly to Robert Rogers and Fency Rogers or deposited to their credit in the Sapulpa State Bank at Sapulpa, Oklahoma; and it was agreed between said parties by the terms of said lease, that the covenants and agreements therein set forth should extend to their successors, heirs, executors, administrators and assigns; a copy of which lease is filed herewith as a part hereof and marked "Exhibit C".

The plaintiff, Anchor Oil Company, says in the matter of the estate of Jennie Samuels, deceased, pending in the County Court of Creek County, Oklahoma, which court had jurisdiction at the
6 times herein mentioned of said estate and jurisdiction of the matters hereinafter stated, the said County Court and judge thereof did on the 6th day of December, 1915, by an order duly and regularly entered in said matter, approve the said lease from the said Robert Rogers and Fency Rogers to said J. P. Williams, in so far as said lease covered the

North Sixty (60) Acres of the East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-Six (36), Township Eighteen

(18) North, Range Twelve (12) East, land situate in Tulsa County, Oklahoma,

and a copy of said Order and Approval is filed herewith as a part hereof, marked "Exhibit D."

Plaintiff, Anchor Oil Company, says that on the 23rd day of December, 1915, by written assignment, executed, delivered and acknowledged by J. P. Williams, the said J. P. Williams assigned said lease to the Western Rope & Cordage Company, a corporation, its successors and assigns, together with all rights and privileges, terms and condition and obligations in and under said lease, a copy of which assignment is filed herewith as a part hereof and marked "Exhibit E."

Plaintiff, Anchor Oil Company, says that on the 30th day of November, 1915, the said Lina White, formerly Lina Lowe, nee Billie, and her guardian, Sam W. Brown, for good and valuable considerations, made, executed and delivered unto the said Feney Rogers, nee Sarkachee, a certain deed of conveyance, thereby conveying all of the right, title and interest of said Lina White, nee Billie, in and to the following described land, to wit:

The Northeast Quarter (N. E. 4) of the Northwest Quarter (N. W. 4) and the North Half (N. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East, containing Sixty (60) acres, more or less, situate in Tulsa County, Oklahoma;

that said deed was duly approved on the 14th day of December, 1915, by Vick S. Decker, Judge of the County Court of Creek County, Oklahoma, and approved by said court by an order duly made and entered by said court on the 14th day of December, 1914, a copy of which deed of conveyance is filed herewith as a part hereof and marked "Exhibit F," and a copy of said order is filed herewith as a part hereof and marked "Exhibit G."

7 Plaintiff, Anchor Oil Company, says that on the 27th day of December, 1915, Luia Lowe, nee Billie, now Luia White, an adjudged incompetent, who plaintiff says is the same person as Lina White, formerly Lina Lowe, nee Billie, as hereinbefore set out, by her duly appointed, qualified and acting guardian, Sam W. Brown, for a valuable consideration, made, executed and delivered to said J. P. Williams an oil and gas mining lease on, in and covering the

South Half (S. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East, and containing Twenty (20) Acres, more or less, in Tulsa County, Oklahoma,

which lease was duly approved by the County Court of Creek County, Oklahoma, and the county judge thereof, said court and said judge at the time having jurisdiction of the approval of said lease, and a copy of said lease is filed herewith as a part hereof and marked "Ex-

hibit H," and a copy of the Order of Approval of said lease is filed herewith as a part hereof and marked "Exhibit I;" and plaintiff says that, by the terms of said lease, it was to remain in full force and effect for a term of five (5) years from the third day of January, 1916, and as much longer thereafter as oil or gas is found in paying quantities; and plaintiff says that by the terms and conditions of said lease it was agreed between the said Lina White, formerly Lina Lowe, nee Bille, and the said J. P. Williams, his heirs and assigns, that said Williams would deliver to her credit, or to her heirs and assigns, free of cost in the pipe line to which any wells might be connected, the equal one-eighth ($\frac{1}{8}$) part of all oil produced and saved from the leased premises.

(b) Said J. P. Williams was to pay to Lina White or her heirs and assigns, One Hundred Fifty Dollars (\$150.00) a year in advance for the gas from each well where gas only is found while the same is being used off the premises.

(c) Said Williams was to pay Lina White for gas produced from any oil well and used off the premises at the rate of One Hundred Fifty Dollars (\$150.00) per year for the time during which such gas should be used, said payment to be made each three (3) months in advance.

(d) Said J. P. Williams, his heirs or assigns, by the terms of said lease agreed to complete a well on said premises within twelve (12) months of the date of same or pay at the rate of Twenty Dollars (\$20.00) in advance for each additional twelve (12) months such completion was delayed from the time mentioned for the completion of a well until the well was completed, and it was agreed that the completion of such a well should be and operate as a full liquidation of all rent due under the provisions of said lease.

(e) It was further agreed between the parties that said J. P. Williams, his heirs and assigns, should not be bound by any change in ownership of said land until duly notified of any such change either by notice in writing, duly signed by the parties to the instrument of conveyance, or by receipt of the original instrument of conveyance or the duly certified copy thereof.

(f) Said J. P. Williams, his heirs and assigns, agreed to pay Lina White all cost of damages to growing crops on said land; and all payments falling due under said lease were to be made directly to the lesser or deposited to her credit in the Bank of Jenks, Jenks, Oklahoma; and by the terms and conditions of said lease all covenants and agreements therein contained extended to their heirs, executors, administrators, successors and assigns in so far as said covenants and agreements were made between the parties to said lease.

Plaintiff, Anchor Oil Company, says that on the 4th day of January, 1916, for a valuable consideration, the said J. P. Williams, by written assignment, made, executed and delivered to the Western Rope & Cordage Company an assignment of the last mentioned lease, together with all rights thereunder and therein, in and to the land

and oil and gas therein and thereunder, described in said lease, a copy of which written assignment is filed herewith as a part hereof and marked "Exhibit J."

Plaintiff, Anchor Oil Company, says that on the 7th day of March, 1916, by written assignment made, executed and delivered to the Anchor Oil Company by the Western Rope & Cordage Company, said Western Rope & Cordage Company assigned and conveyed to the said Anchor Oil Company, a corporation, the above described lease, rights, titles and interests in and to the land hereinbefore described, as covered by said leases, and the rights under said leases, which land is described as follows, to-wit:

The South Half (S. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East, and the Northeast Quarter (N. E. 4) of the Northwest Quarter (N. W. 4) and the

North Half (N. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of section Thirty-six (36)

Township Eighteen (18) North, Range Twelve (12) East, land situate in Tulsa County, Oklahoma, and otherwise described as the East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East, in Tulsa County, Oklahoma,

a copy of which assignment is filed herewith as a part hereof and marked "Exhibit K."

Plaintiff says that the above and foregoing is a deraignment of its right, title and interest and leasehold estate in and to the

East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East in Tulsa County, Oklahoma.

Plaintiff, Anchor Oil Company, says that by the terms of said leases and the assignments thereof aforesaid, the plaintiff and its assignors, at the times mentioned, became the owners of, and plaintiff is now the owner of the exclusive right to operate or drill on the

East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East in Tulsa County, Oklahoma,

for petroleum, for oil and gas, on the terms and for the time stated aforesaid; and plaintiff, by the terms of said leases, acquired the right to enter, drill, prospect, produce and save from said premises, oil and gas and petroleum, and so had the right to commence a well on said premises for said purposes any time between the 6th day of December, 1915, and the 6th day of June, 1916, and now has the exclusive right of possession of said land for the execution of said leases and assignments thereof, as aforesaid; and plaintiff, Anchor Oil Company, acquired a leasehold estate in the last above described land by which the plaintiff had the sole and exclusive right to enter, within said time, upon, explore

and develop said land for oil and gas and to drill wells for oil and gas and to extract, save and market oil and gas and to run oil and gas that might be found or that should be found under the said land and, dispose of and sell all oil and gas in and under the last described tract of land, excepting the one-eighth ($\frac{1}{8}$) of the oil to be delivered to the grantors in said leases by way of royalty.

Plaintiff says that in May, 1916, and prior thereto, this plaintiff and its assignors, for and on behalf of plaintiff, made and completed preparations to commence a well on said premises
10 in accordance with the terms of said leases, and made and completed preparations to enter upon said premises for the purpose of developing same as aforesaid and for the purpose of drilling oil and gas wells and extracting oil and gas therefrom and selling and marketing the same, and delivering one-eighth ($\frac{1}{8}$) thereof to the grantors in said leases; that the plaintiff was at all times ready, able, anxious and willing to comply with all the terms and conditions of said leases and assignments thereof, and ready, able and willing to enter upon said premises and drill oil and gas wells thereof and develop said property for oil and gas, and save the oil and gas and market the same that might be extracted from said premises; and while said plaintiff was making said preparations to enter said premises to drill said wells and develop said lands according to the terms and conditions of said leases and assignments, and with full knowledge of plaintiff's leases and plaintiff's rights under said leases, and rights in and to said land, and with full knowledge of plaintiff's leasehold estate in said last described premises, the defendants did forcibly, tortiously, wrongfully, unlawfully and without the consent of plaintiff and against the will and over the protest of the plaintiff, the defendants, W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and The Gulf Pipe Line Company of Oklahoma, a corporation, entered into and upon said lands, drilled oil and gas wells thereon, extracted therefrom oil and gas, and wrongfully and unlawfully converted to their own use eighty thousand (80,000) barrels of petroleum, or crude oil, of the value of One Hundred Thousand Dollars (\$100,000.00), over and above the one-eighth ($\frac{1}{8}$) of the oil belonging to the owners of the fee simple title to said land, all of which oil so taken was the property of this plaintiff; and plaintiff says that defendants so entered upon said premises aforesaid and erected derricks and drilled oil and gas wells thereon and extracted oil therefrom, as aforesaid, and so entered upon said premises on the 23rd day of May, 1916, without the consent and over the protest of this plaintiff, and since said date have continued to withhold possession of said property from plaintiff, forcibly, unlawfully and wrongfully, thereby preventing said plaintiff from taking possession of said premises and developing same for oil and gas, and preventing plaintiff from extracting oil and gas from said premises and saving same and selling same and marketing same, to the continuing damage, trespass and injury of said plaintiff and its rights; and the defendants have ever since said time,

to-wit, since May 23, 1916, been in the actual adverse possession of said premises and are now wrongfully and unlawfully excluding the plaintiff from said premises for any and all purposes whatsoever, and are now preventing and excluding the plaintiff from performing the terms and conditions of the leases hereinbefore set out; and defendants will continue to operate said property and extract oil therefrom and gas therefrom and appropriate and convert the same to their own use, and will continue to exclude plaintiff from said premises and from the right to exercise plaintiff's leasehold estate in said premises unless enjoined by order of this court, to the continuing great and irreparable damage and injury of said plaintiff.

Plaintiff says that ever since the 6th day of December, 1915, and the 4th day of January, 1916, this plaintiff has been entitled to the possession of the last described property and of the right to enter upon and into the possession of said property for the purpose of operating for oil and gas and developing same for oil and gas, for the purpose of complying with the terms of the leases as hereinbefore set out; and it is now entitled to such possession for said purposes, but said possession was at said times and is now tortiously, wrongfully and unlawfully withheld from this plaintiff by the defendants to the damage of the plaintiff in the sum of One Hundred Thousand Dollars (\$100,000.00).

Plaintiff, Anchor Oil Company, says that Jennie Samuels had no child or children born to her since March 4, 1906.

Plaintiff, Anchor Oil Company, says that the oil and gas leases from Robert and Fency Rogers and from Lina Lowe White to J. P. Williams, marked "Exhibit C" and "Exhibit H," were and are respectively recorded:

1. In the County Clerk's Office or Register of Deeds' Office of Tulsa County Oklahoma, in Book 180, page 111, December 9, 1915, as to the first mentioned lease; and the order of the County Court of Creek County approving said lease was filed in said office and recorded December 22, 1915, in Book 185, page 452; and on the 4th day of January, 1916, in Book 155, page 254, as to the second lease, "Exhibit H," and a copy of said order approving said lease is included in said lease.

2. The assignment of said first mentioned lease by J. P. Williams to the Western Rope & Cordage Company, a corporation, dated December 23, 1915, was filed for record in the office aforesaid on December 27, 1915, and recorded in Book 185, at page 489.

3. The quit claim deed from Lina White, formerly Lina Lowe, nee Billie, to Fency Rogers, "Exhibit F," was filed in said office on the 17th day of December, 1915, and is recorded in Book 140, page 298.

4. The assignment of the second mentioned lease by J. P. Williams, dated January 4, 1916, assigning same to the Western Rope & Cordage Company, was filed for record in said office on January 4, 1916, and is recorded in Book 185, page 629.

Plaintiff says that the defendants had actual notice and had knowledge in and about the month of March, 1916, of plaintiff's leases, rights, titles and claims, as herein set out, and notwithstanding said knowledge and notice and notwithstanding the facts as herein set out, the defendants, and each of them, wrongfully, unlawfully and tortiously entered upon said premises and commenced operations as hereinbefore set out, and prevented plaintiff from performing its contract and agreements under said leases as to entering, drilling and extracting oil and gas and marketing same, all of which it offered to do before June 6, 1916, and would have done but for the wrongful, tortious and unlawful acts of defendants as herein set out; and plaintiff says that in all other respects it and its assignors complied with all the terms and conditions, of said leases; that at no time was this plaintiff or any of its assignors notified of any transfer, sale or conveyance of said land to any person, as required by the terms and conditions of said leases, but notwithstanding this fact the plaintiff says that it and its assignors, before the 6th day of June, 1916, deposited in the State Bank of Sapulpa, Oklahoma, Ten Dollars (\$10.00) advance rental under the first mentioned lease, to the credit of Fency Rogers and Robert Rogers, having first attempted to find Robert Rogers and Fency Rogers to pay them directly said rental, and having failed to find them, deposited said rental as herein stated; and that thereafter the plaintiff and its assignors were informed that Fency Rogers and Robert Rogers and Lina Lowe White had sold the said land to one, L. B. Jackson; and that plaintiff and its assignors tried to locate said Jackson and pay him directly the said rentals, but failed to find him, and thereafter, on or about the 15th day of June, 1916, offered to deposit Ten Dollars (\$10.00) in said last mentioned bank to the credit of said Jackson and said bank refused to accept said money; and that the plaintiff, on the 7th day of July, 1916, deposited in said bank to the credit of L. B. Jackson, the sum of Twenty Dollars (\$20.00) to pay the advance rentals on said leases according to the terms thereof; and that afterwards, in August, 1916, said L. B. Jackson refused to accept said rentals and refused to recognize any rights or claims of the plaintiff or its assigns.

13

Second Paragraph.

Plaintiff, for a second cause of action against the defendants herein, states and alleges:

It hereby adopts and reaffirms all of the allegations in said first cause of action, as above set out, and makes the same a part and parcel of this, its second cause of action, the same as if fully and completely herein set forth and repeated; that the said defendants claim some right, title, estate and interest in and to the oil and gas mining leasehold estate pertaining to the lands hereinabove described, the exact nature of which, character and extent of which are to this plaintiff unknown, except that said defendants have caused to be filed for record in the office of the County Clerk within and for Tulsa County,

Oklahoma, certain alleged and purported instruments, as follows, to-wit:

1. An alleged and purported oil and gas mining lease executed under date of December 5, 1914, by Jennie Samuels as lessor and to F. D. McDonnell and Charles Egan as lessees, which said alleged and purported oil and gas mining lease was filed for record in the office of the County Clerk in and for Tulsa County, Oklahoma, on the 10th day of August, 1916, and now appears of record therein in Book 167, page 148 thereof.

2. A certain alleged and purported assignment dated August 8, 1916, executed by F. D. McDonnell to F. C. Giddings and filed for record in the office of the County Clerk of Tulsa County, Oklahoma, on the 10th day of August, 1916, and now appearing of record therein in Book 196 at page 434 thereof.

3. A certain alleged and purported assignment dated September 5th, 1916, executed by F. C. Giddings to W. H. Gray, filed for record in the office of the Register of Deeds within and for Tulsa County, Oklahoma, on the 5th day of October, 1916, and now appearing of record therein in Book 202 at page 178 thereof.

Plaintiff states that said pretended and purported oil and gas mining lease and the said pretended and purported assignments thereof are null and void and of no validity or force whatsoever, but that the same, having been filed for record in the office of the County Clerk of Tulsa County, as aforesaid, constitute a cloud upon the title of this plaintiff in and to the property hereinabove mentioned and described, and plaintiff is entitled to have same cancelled and removed of record.

14

Third Paragraph.

The plaintiff, for its third cause of action against the defendants herein, alleges and states:

That it hereby adopts and reaffirms all of the allegations in said first and second causes of action hereinabove specifically set out and makes the same a part and parcel of this, its third cause of action against said defendants, the same as if fully and completely herein set forth and repeated; and this plaintiff further states and alleges that the reasonable rental value of the property hereinabove described, for the time that this plaintiff has been unlawfully and wrongfully deprived of the use, occupation and possession thereof, as hereinabove specifically set forth, is the sum of One Hundred Thousand Dollars (\$100,000.00); and that by reason of having been unlawfully kept out of possession of said property by said defendants, as specifically hereinabove described, the plaintiff has been deprived of the right and opportunity to improve and develop same and to collect and earn the rents and profits therefrom in the sum of said One Hundred Thousand Dollars (\$100,000.00); that said property is an oil and gas producing property and that its special value is by reason of the production of petroleum, oil and gas therefrom; that said property is

situated in an oil field in what is commonly known as proven territory, and that oil wells have been drilled and oil wells are now being operated on property adjoining same, which have not been offset, and that this plaintiff has offered and demanded the right and privilege to go upon said leasehold estate to drill said offset wells and thereby to keep and prevent the oil and gas from being drained from and under the property hereinabove described by the adjoining wells thereto, but that said defendants have refused and now refuse to permit this said plaintiff to drill said offset wells and protect the lines of said property from drainage by surrounding leases as aforesaid.

Plaintiff states that it is informed and believes, and so believing, it is therefore alleged that the defendants, and each of them, except the Gulf Pipe Line Company, are insolvent and unable to respond to this plaintiff for damages and that it is necessary that this Honorable Court appoint some suitable person as Receiver of said property in order to preserve and conserve and protect the corpus of the estate pending the final termination of this action; that the said Gulf Pipe Line Company of Oklahoma is a common carrier engaged in transporting oil from said leased premises and as such will deny any liability to the plaintiff by reason of the facts, circumstances and statements hereinabove contained.

15 Wherefore, The premises considered, the plaintiff prays judgment and decree of this Honorable Court as follows, to-wit:

First. That plaintiff be declared to be the owner of the oil and gas mining leases and the oil and gas mining leasehold estate in and to the lands hereinbefore described, and the oil and gas in and under and upon the same, and all equipment thereon, and as such, be entitled to the exclusive and sole possession of same for the purpose of appropriating, market- and developing said lands and the oil and gas therein and thereunder, in accordance with the terms and stipulations in said leases contained.

Second. That the said defendants, and each of them, and all persons claiming or to claim by, through or under said defendants or any of them, be adjudged and declared to have no right, title, estate or interest in and to the said property or any part thereof, and that the alleged and purported muniments of title and oil and gas lease and assignments thereof, filed for record by said defendants as herein specifically set up and alleged, and each of them, be by this Honorable Court ordered cancelled of record as a cloud on *the* into or upon said property *on* any part thereof.

Third. That the said defendants, and each of them, be adjudged and decreed to have no power, authority or warrant to withhold the right of possession of plaintiff in and to said property, and that said defendants, and each of them, be perpetually enjoined and forbidden from interfering with the possession of the plaintiff in and to said property, and be further enjoined and forbidden from trespassing or entering into or upon said property *on* any part thereof.

Fourth. That the said plaintiff have and recover of and from the said defendants, for the unlawful detention and withholding of said property, the said sum of One Hundred Thousand Dollars (\$100,000) and such other sum or sums as the court may find to be due said plaintiff from said defendants.

Fifth. That pending the final termination of this suit, this court appoint some suitable person as a Receiver for said property, to take possession of same and to conserve, protect and preserve the said property and the proceeds therefrom, pending the final termination of this action.

Sixth. That said plaintiff have and recover from the defendants the costs herein and that said plaintiff have such other and further relief, both special and general, to which in law or equity it may, in the opinion of this Honorable Court, be entitled.

C. P. CHENAULT,
GEO. T. BROWN,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Affiant, B. M. Gessel, says that he is the duly qualified and acting President of the Anchor Oil Company, and he says that the statements of the foregoing petition are true as he verily believes.

B. M. GESSEL.

Subscribed and sworn to before me this 19th day of January, 1917.
[SEAL.] AGNES C. LEFTWICH.

Notary Public.

My commission expires July 24, 1917.

"EXHIBIT A."

Allotment Deed. Creek Indian. Roll No. 5941.

Filed for record October 16, 1903, in the office of the Commissioner to the Five Civilized Tribes (Dawes Commission) at Muskogee, Oklahoma, and recorded in Book 17, page 80.

Muskogee (Creek) Nation,
Indian Territory.

To all to whom these presents shall come, greeting:

Whereas, By the Act of Congress approved March 1st, 1901 (31 Stats. 861), agreement ratified by the Creek Nation, May 25th, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians in the Indian Territory, except as therein provided, should be divided among the citizens of said tribe by the United States Com

missioner to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed; and

Whereas, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Jennie Samuel, a citizen of said tribe, as an allotment exclusive of a forty acre homestead, as aforesaid.

Now, Therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Jennie Samuel, all right, title and interest — the Muskogee (Creek) Nation and all other citizens of said nation in and to the following described land, viz.:

Southwest Quarter of Southwest Quarter of Section 8 and the South Half of the Northwest Quarter of Section 36, Township 18 North, Range 12 East

of the Indian Base Meridian, in Indian Territory containing 120 acres more or less, as the case may be, according to the United States Survey thereof, subject however, to all provisions of said Act of Congress approved June 30, 1902 (Public No. 200).

In Witness Whereof, I, the Principal Chief of the Muskogee (Creek) Nation have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 28th day of August, A. D. 1903.

[SEAL.]

P. PORTER,

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior. Approved Oct. 9, 1903. Thos. Ryan, Acting Secretary, By Oliver A. Phelps, Clerk.

"EXHIBIT B."

Homestead Deed. Creek Indian. Roll No. 5941.

Dated Aug. 28, 1903.

Filed for record Oct. 16, 1903, in the office of the Commissioner to the Five Civilized Tribes at Muskogee, Oklahoma (Dawes Commission) and recorded in book Q, page 80.

Muskogee (Creek) Nation,
Indian Territory.

To all to whom these presents shall come, greeting:

Whereas, By the Act of Congress approved March 1st, 1901 (31 Stats. 861), agreements ratified by the Creek Nation, May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians in the Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Com-

missioner to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas, It was provided by said Act of Congress that each citizen shall select or have selected for him, from his allotment forty
18 acres of land as homestead for which he shall have a separate deed; and

Whereas, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Jennie Samuel, a citizen of said tribe, as a homestead.

Now, therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Jennie Samuel, all right, title and interest of the Muskogee (Creek) Nation and all other citizens of said nation in and to the following described land, viz.:

The Northeast Quarter of the Northwest Quarter of Section 36, Township 18 North, Range 12 East;

east of the Indian Base and Meridian, in Indian Territory containing 40 acres more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress, relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902. (Public No. 200.)

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 28th day of August, A. D. 1903.

P. PORTER,

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior. Approved Oct. 9, 1903. Thos. Ryan, Secretary, By Oliver A. Phelps, Clerk.

"EXHIBIT C."

Oil and Gas Lease.

Agreement, made and entered into the 6th day of December, 1915 by and between Robert Rogers and Fency Rogers, née Sarkachee of Creek County, Oklahoma, of the first part, lessors, and J. P. Williams, party of the second part, lessee.

Witnesseth: That the said party of the first part, for and in consideration of the sum of One Dollar to them in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agreements herein after contained on the part of the party of the second part to
19 be paid, kept and performed, has granted, demised, leased and let and by these presents do grant, decise, lease and let unto the said second party his successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying

pipe lines, and of building tanks, powers, stations and structures thereon to produce and take care of said products, all that certain tract of land situate in the County of Creek and Tulsa, State of Oklahoma, described as follows, to wit:

S. W. 4 of S. W. 4 of Section 8, Township 18, R. 12 in Creek County, Oklahoma, and

E. one-half of N. W. 4 of Section 36, Township 18, Range 12 in Tulsa County, Oklahoma, and containing in all 120 acres, more or less.

It is agreed that this lease shall remain in force for the term of one years from this date, and as long thereafter as oil or gas or either of them is produced therefrom by the party of the second part, his successors or assigns.

In consideration of the premises the said party of the second part covenants and agrees:

1st. To deliver to the credit of the first part- their heirs or assigns, free of cost, in the pipe line to which may connect in wells the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay to the first party One Hundred & Fifty Dollars each year in advance, for the gas from each well where gas only is found, while the same is being used off the premises, and the first part- to have gas free of cost from any such well for * * * stoves and * * * inside lights in the principal dwelling house on said land during the same time by making * * * own connections with the well.

3rd. To pay to the first parties for gas produced from any oil well and used off the premises at the rate of — Dollars per year, for the time during which such gas shall be so used, said payments to be made each three months in advance.

The party of the second part agrees to commence a well on said premises within six months from the date hereof or pay in advance \$10.00 Dollars per month in advance for each additional month such completion is delayed from the time above mentioned for the completion of such well until a well is completed; and it is agreed that the completion of such well shall be and operate as a full liquidation of all rent under this provision during the remainder of the term of this lease.

20 The party of the second part shall have the right to use, free of cost, gas, oil and water produced on said land for operation thereon except water from wells of first party.

When requested by first party, the second party shall bury * * * pipe lines below plow depth.

No well shall be drilled nearer than 50 feet to the house or barn on said premises.

Second party shall pay for damages caused by it, to growing crops on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

The party of the second part shall not be bound by any change in the ownership of said land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance, or by receipt of the original instrument of conveyance or a duly certified copy thereof.

All payments which may fall due under this lease may be made directly to Robert Rogers and Fency Rogers or deposited to their credit in Sapulpa State Bank, Sapulpa, Oklahoma.

All covenants and agreements herein set forth between the parties hereto shall extend to their successors, heirs, executors, administrators and assigns.

Witness the following signatures and seals.

ROBERT ROGERS [SEAL.]
FENEY. [SEAL.]

Acknowledgment.

STATE OF OKLAHOMA,
County of Tulsa, ss:

On this 6th day of December, A. D. 1915, before me, the undersigned, a notary public in and for the county and state aforesaid, personally appeared Robert Rogers and Fency Rogers, nee Sarkachee, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as — free and voluntary act and deed for the uses and purposes therein set forth.

DAISY C. TUCKER,
Notary Public.

My commission expires Feb. 13, 1919.

"EXHIBIT D."

75619.

Order Approving Oil and Gas Lease.

21 Filed December 22nd, 1915, at 1:35 P. M. Recorded in
Book 185, page 452, in the office of the Register of Deeds
within and for Tulsa County, State of Oklahoma.

STATE OF OKLAHOMA,
County of Creek, ss:

In the County Court.

In re the ESTATE of JENNIE SAMUELS, Deceased.

This cause coming on to be heard in the petition of Robert Rogers and Fency Rogers, for approval of oil and gas lease, made and executed on the 6th day of December, 1915, by said parties, to J. P. Williams, on the

Southwest Quarter ($\frac{1}{4}$) of the Southwest Quarter ($\frac{1}{4}$) of Section 8 and the East Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 36, Township 18 North, Range 12 East, the former tract of land being in Creek County and the latter tract of land being in Tulsa County, Oklahoma.

The court finds that the above described land was owned by Jennie Samuels, now deceased, the mother of Fency Rogers and further finds by deeds of partition which have been approved by this court between the heirs of Jennie Samuels, deceased, to-wit: Between Lina Lo White, *formally* Billy and Fency Rogers *formally* Narchakee. Said above described land has been divided as follows, to-wit:

The Southwest Quarter ($\frac{1}{4}$) of the Southwest Quarter ($\frac{1}{4}$) of Section 8, Township 18 North, Range 12 East in Creek County and the South 20 acres of the East Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 36, Township 18 North, Range 12 East, in Tulsa County, Oklahoma, has been partitioned and deeded to said Lina Lo White by Fency Rogers and that the north 60 acres of the East Half ($\frac{1}{2}$) of the Northwest Quarter of Section 36, Township 18 North, Range 12 in Tulsa County, Oklahoma, has been partitioned and deeded to Fency Rogers, aforesaid.

And the aforesaid oil and gas lease by said Robert Rogers and Fency Rogers to said J. P. Williams is found to have been executed for a reasonable consideration and that the parties herein mentioned desire that same shall be approved — is a full-blood Creek Indian.

It is therefore ordered, decreed and adjudged, that the aforesaid lease be and the same is hereby approved in so far as it covers the North 60 acres of the East Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 36, Township 18 North, Range 12 East, situated in Tulsa County, Oklahoma.

The court further finds that Fency Rogers is not the owner and has no interest at the present time in the Southwest Quarter ($\frac{1}{4}$) of the Southwest Quarter ($\frac{1}{4}$) of Section 8 and the South 20 acres of the East Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 36, Township 18 North, Range 12 East, the former tract being in Creek County and the latter tract being in Tulsa County and the aforesaid oil and gas lease so far as the last mentioned and described lands are concerned, is disapproved, and it is therefore ordered and directed by the court that said lease as affecting the last described land be and the same is hereby disapproved.

Given under my hand this 14th day of December, 1915.

[SEAL.]

VICK S. DECKER,

Judge.

STATE OF OKLAHOMA,

County of Creek, ss:

In the County Court.

I, W. R. Casteel, Court Clerk in and for Creek County, State of Oklahoma, hereby certify that the within and foregoing is a true

copy of the original Order approving Oil and Gas Lease in cause No. 433 F. B. In the matter of the estate of Jennie Samuels, deceased, as the same appears on file and of record in my office.

W. R. CASTEEL,

Court Clerk,

By RAY McELHINEY,

Deputy.

[County Court Seal.]

Internal Revenue Stamps 10c. cancelled.

"EXHIBIT E."

137—371.

Assignment of Oil and Gas Lease.

Dated December 23, 1915, and filed for record in the office of the Register of Deeds within and for the County of Tulsa, at Tulsa, Oklahoma, on December 27, 1915, at 2:00 P. M. and recorded in Book 185 at page 489.

Whereas on the 6th day of December, 1915, Robert Rogers and Feney Rogers, made, executed, acknowledged and delivered unto J. P. Williams, a certain oil and gas mining lease covering the

Southwest Quarter (SW4) of the Southwest Quarter (SW4) of Section Eight (8) in Township Eighteen (18) of Range Twelve (12); in Creek County, Oklahoma, and also covering the east one-half of the Northwest Quarter (E2 of NW4) of Section Thirty-six (36), in Township Eighteen (18) of Range Twelve (12) in Tulsa County, Oklahoma.

And which lease was approved by the County Court of Creek County, Oklahoma, on December 14th, 1915, in so far as the same covered and covers the northeast quarter (NE4) of the northwest quarter (NW4) and the north one-half (N2) of the southeast quarter

(SE4) of the Northwest quarter (NW4) of section thirty-six (36) in Township Eighteen (18) of range twelve (12) in Tulsa County, Oklahoma.

And which lease was filed of record in the office of the Register of Deeds in and for Tulsa County, Oklahoma, on December 9th, 1915, and a certified copy of the order of the County Court of Creek County, Oklahoma, approving said lease in so far as the same covers the northeast quarter of the northwest quarter and the north one-half of the southeast quarter of the northwest quarter all being in and of section thirty-six (36), township eighteen (18), range twelve (12), lying, situate in Tulsa County, Oklahoma, was filed for record in the office of the Register of Deeds in and for Tulsa County, Oklahoma, on December 22nd, 1915.

Now, therefore, and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, paid unto the said J. P. Williams, said lessee by Western Rope and Cordage Company, a corporation, the said J. P. Williams does hereby bargain, sell, transfer,

vey and assign all his right, title and interest in and to said oil and gas lease in so far as the same covers

the northeast quarter of the northwest quarter (NE4 of NW4) and the north one-half of the southeast quarter of the northwest quarter (2 of SE4 of NW4) all being in and of section thirty-six in township eighteen, range twelve, lying and situate in Tulsa County, State of Oklahoma.

to the Western Rope and Cordage Company, a corporation, its successors and assigns.

And the said J. P. Williams does covenant with said Western Rope and Cordage Company, its successors and assigns, that he is the lawful owner of the aforesaid oil and gas lease and the rights and interests thereunder in so far as the same covers the northeast quarter of the northwest quarter and the north half of the southeast quarter of the northwest quarter of section thirty-six in township eighteen of range twelve lying and situate in Tulsa County, Oklahoma, and that he will and does hereby warrant the same as against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said J. P. Williams has hereunto set his hand this the 23rd day of December, 1915.

J. P. WILLIAMS.

STATE OF OKLAHOMA,
Tulsa County, ss:

Be it remembered that on this 23rd day of December, 1915, before me, the undersigned notary public in and for said county and state personally appeared J. P. Williams, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

[SEAL.]

C. R. RICHARDS,

Notary Public.

Commission expires June 27, 1919.

"EXHIBIT F."

No. 75491.

Quit Claim Deed.

Now All Men by These Presents:

That Lina White nee Lowe nee Billie incompetent and Samuel W. Gray her legal guardian parties of the first part, in consideration of the sum of a partition or exchange of interests in lands and one dollar in hand paid, the receipt of which is hereby acknowledged, do

hereby grant, bargain, sell and quit claim unto Fency Rogers nee Sarkache the following described real property and premises, situated in Tulsa County, State of Oklahoma, to-wit:

Northeast quarter of northwest quarter and the north one-half of the southeast quarter of northwest quarter of section 36, township 18 north range 12 east and containing 60 acres, more or less, together with all the improvements, thereon and appurtenances thereto belonging.

To have and to hold said described premises, unto the said party of the second part, her heirs or assigns.

Signed and delivered this 30th day of November, 1915,

LINA WHITE, NEE BILLE,
SAMUEL W. BROWN,

Guardian of Lina White, nee Lowe, nee Bille, Incompetent.

Examined and approved by me this 14th December, 1915. Court Seal, Creek County, Oklahoma.

VICK S. DECKER,
County Judge.

Internal Revenue 50c.

STATE OF OKLAHOMA,
Creek County, ss:

Before me, the undersigned, a notary public, in and for said county and state on this 30th day of November, 1915, personally appeared

25 Lina White nee Lowe nee Billie and Samuel W. Brown, her legal guardian, to me known to be the identical persons, who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and date above written.
[SEAL.]

R. L. WILKINSON,
Notary Public.

My commission expires Oct. 23, 1917.

I hereby certify that this instrument was filed for record in my office on 17 day of Dec., A. D. 1915, at 3:40 o'clock P. M.

LEWIS CLINE,
County Clerk.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, Lewis Cline County Clerk in and for the county and state above named, do hereby certify that the foregoing is a true and correct

copy of a like instrument now of record, in my office and recorded in Book 140, page 298.

Dated the 11th day of Jan., 1917.

[SEAL.]

LEWIS CLINE,
County Clerk.
O. G. WEAVER,
Deputy.

"EXHIBIT G."

Certificate.

STATE OF OKLAHOMA,
County of Creek, ss:

I, Harrison Arnold Court Clerk in and for Creek County, State of Oklahoma, hereby certify the within to be a true copy of the order in Case Number 433, F. B. In the Matter of the Estate of Jennie Samuel, Deceased, in the County Court, as the same appears on file and record in my office.

Dated this 16th day of January, 1917.

[SEAL.]

HARRISON ARNOLD,
County Clerk,
By GEORGIA ROUNDS,
Deputy.

STATE OF OKLAHOMA,
County of Creek:

In the County Court.

No. 433.

In the Matter of the Estate of Jennie Samuel, Deceased.

Order.

Now on this 14 day of December, 1915, there came on for hearing the petition of Feney Rogers and Samuel W. Brown, as guardian of the person and estate of Lina White, nee Lowe, nee Billie, incompetent, for an order of this court approving certain Quit Claim Deeds.

Said petitioner Feney Rogers appearing in person and by her attorney, James J. Mars and said Petitioner, Samuel W. Brown, as guardian of said incompetent, appearing in person and by his attorney, R. L. Wilkinson, and the court after hearing the evidence and being fully advised in the premises and upon consideration thereof, finds:

That the said Jennie Samuel was a full-blood Creek Indian, and duly enrolled as such, and that by reason thereof she had allotted to her the following described lands, to-wit:

SW4 of SW4 of Section 8, Township 18, North, Range 12 East and situate in Creek County, State of Oklahoma, and SW4 of NW4 and E2 of NW4 of Section 36, Township 18 North, Range 12 East, and situate in Tulsa County, State of Oklahoma,

and all containing 160 acres, more or less.

That said Jennie Samuel died intestate in Creek County, Oklahoma, on the 11th day of October, 1915, leaving as her sole and only heirs at law, Fency Rogers and Lina White, nee Lowe, nee Billie, and that said decedent had no issue born to her since the 4th day of March, 1906.

The court further finds that said Jennie Samuel, prior to her death, sold and conveyed 40 acres of said real estate above described, to-wit: SW4 of NW4 of Section 36, Township 18 North, Range 12 East, but at the time of her death was the absolute owner in fee simple of the balance of said allotment.

The court further finds that Fency Rogers, as an heir of Jennie Samuel, deceased, on the 30 day of November, 1915, made and execute to Lina White, nee Lowe, nee Billie, *ner* certain Quit Claim Deed conveying to said Lina White, nee Lowe, nee Billie, all of her right, title and interest in and to the SW4 of SW4 of Section 8, Township 18 North, Range 12 East, and the S2 of SW4 of NW4 of Section 36, Township 18 North, Range 12 East, of said allotment; and that Lina White, nee Lowe, nee Billie, an incompetent, by her guardian, Samuel W. Brown, on the 30 day of November, 1915, made and executed to Fency Rogers, his certain Quite Claim Deed, conveying to said Fency Rogers, all the right, title and interest of said incompetent in and to the NE4 of NW4 and N2 of SE4 of NW4 of Section 36, Township 18 North, Range 12 East, of said allotment, and both of said deeds were delivered to this court pending the approval thereof; and that prior to the execution of said deed by Samuel W. Brown, as guardian of said incompetent he first obtained the consent and authority of this court to execute the same.

The court further finds that the consideration of each of the above mentioned deeds and transfers is a partition and division of the interest of petitioners and grantors in said lands, and that each of said deeds should be by the court approved;

27 It is therefore, by the court considered, ordered, adjudged and decreed that the Quit Claim Deeds presented herewith be and they are hereby approved according to Section 9 of the Act of Congress approved May 27th, 1908.

[SEAL.]

VICK S. DECKER,
Judge of County Court.

Endorsement: No. 433, F. B. Jennie Samuel, Dec. Order. Received and filed in County Court, Creek County, Dec. 14, 1915, W. R. Casteel, Court Clerk, Creek County, By R. V. Holcomb. Rec. Book 1, page 82.

"EXHIBIT H."

Oil and Gas Mining Lease by Guardian, Under Order of Court.

Know all Men by these presents: That heretofore, on the 27th day of December, 1915, ——— as guardian of the estate of Luia Love, nee Billie, now Luia White, an incompetent, a minor filed in the County Court of Creek County, State of Oklahoma, his petition for leave to lease for oil and gas purposes, the land hereinafter described belonging to his said ward, and

Whereas, the said County Court, did, on the 27th day of December, 1915, make an order of sale, directing the said guardian, S. W. Brown, to sell at public sale, to the highest and best bidder an oil and gas lease on the land of his said ward for a term of five years and as much longer thereafter as oil or gas is found in paying quantities, and

Whereas, the said guardian sold said oil and gas lease to J. P. Williams on the 3rd day of January, 1916, as shown by his report of said sale to said court, and

Whereas, the said County Court did on the 3rd day of January, 1916, make an order confirming and approving said sale, and ordering and directing the said guardian to execute a lease to the said purchaser, in words and figures, to-wit:

"This cause coming on for final hearing before this court on this 3rd day of January, 1916, the same being the regular day of the January, 1916, term of said court, on the return of the guardian, S. W. Brown, and report of his proceedings under the order of sale heretofore made, and it having been proven that in pursuance of the said order of sale, as ordered by this court the said guardian sold
 at public sale to J. P. Williams an oil and gas mining lease
 28 on the land of his said ward, situated in Tulsa County, State of Oklahoma, to-wit:

The South One-half (S2) of the Southeast Quarter (SE4) of the Northwest Quarter (NW4)

of Section 36, Township 18, Range 12 and containing Twenty acres, more or less, for five years from January 3d, 1916, and as much longer thereafter as oil or gas is found in paying quantities and it appearing to the court that said purchaser, J. P. Williams, has paid a cash bonus of \$5.00 per acre, or a total of \$100.00 to the said S. W. Brown, as guardian, and it appearing that the said J. P. Williams is the highest and best bidder for said lease, and that said sale was made and conducted fairly and legally and in accordance with the order of this court, and it further appearing that the said bid of J. P. Williams, to-wit: The sum of \$5.00 per acre and royalty of one-eighth of all the oil produced and saved from the premises, or its equivalent in money, and the sum of \$150 per year for each gas well from which gas is marketed, is fair and adequate, and is not

disproportionate to the value of said oil and gas lease, and that a greater sum cannot be obtained;

"It is therefore ordered and adjudged by the court that the said sale of the said oil and gas lease to the said J. P. Williams be confirmed and approved, and it is ordered that the said guardian, S. W. Brown, execute to the said purchaser, J. P. Williams, an oil and gas lease and make return to this court for final action and approval.

"Done in open court, this 3rd day of January, 1916.

[SEAL.]

VICK S. DECKER,
*Judge of the County Court
in and for Creek County."*

Therefore this agreement, made and entered into in duplicate, the 3rd day of January, A. D. 1916, by and between S. W. Brown, as guardian of the estate of Luia Love, nee Billie, now Luia White, an incompetent, of Creek County, Oklahoma, party of the first part, lessor, and J. P. Williams party of the second part lessee,

Witnesseth, that the said party of the first part, for and in consideration of the sum of One Hundred Dollars, to him in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agree-

ments hereinafter contained on the part of the party of the
29 second part to be paid, kept and performed, has granted, demised and leased and let and by these presents does grant, demise, lease and let unto the said second party, heirs, successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, power stations and structures thereon to produce and take care of said products, for a term of five years from this date and as much longer thereafter as oil or gas is found in paying quantities, all that certain tract of land situated in the County of Tulsa, State of Oklahoma, as follows, to-wit:

The South One-half (S.2) of the Southeast Quarter (S.E.4) of the Northwest Quarter (N.W.4) of Section 26, Township 18, Range 12 and containing twenty acres, more or less.

In consideration of the premises the said party of the second part covenants and agrees:

1st. To deliver to the credit of the first party, her heirs or assigns, free of costs, in the pipe line to which he may connect the wells, the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay to the first party One Hundred Fifty (\$150.00) Dollars each year in advance for the gas from each well where gas only is found, while the same is being used off the premises, and the first party to have gas free of cost from any such well for * * * stoves and * * * inside lights in the principal dwelling house on said land during the same time by making her own connections with the well.

rd. To pay the first party for gas produced from any oil well used off the premises at the rate of One Hundred Fifty Dollars (\$150.00) per year, for the time during which such gas shall be used, said payment to be made each three months in advance.

The party of the second part agrees to complete a well on said premises within Twelve Months from the date hereof, or pay at the rate of Twenty (\$20.00) Dollars in advance for each additional month such completion is delayed from the time above mentioned for the completion of such well until a well is completed; and the parties agreed that the completion of such well shall be and operate as a full liquidation of all rent under this provision during the remainder of the term of this lease.

The party of the second part shall not be bound by any change in the ownership of said land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance, or by receipt of the original instrument of conveyance, or a duly certified copy thereof.

The party of the second part shall have the right to use the land for the production of costs, gas, oil and water produced on said land for operations thereon, except water from wells of first party. When requested by the first party, the second party shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 300 feet to the house or barn on said premises.

The second party shall pay for the damages caused by him to grow-ers on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

All payments which may fall due under this lease may be made directly to the lessor or deposited to his credit in Bank of Jenks, at Jenks, Oklahoma.

The party of the second part, his heirs, successors or assigns, shall have the right at any time, on the payment of One Dollar to the first party of the first part, his successors, to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and terminate; provided this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease, or any of its terms, to recover possession of the leased land, or any part thereof, from the lessor or from the lessor, her heirs, executors, administrators or assigns, or any other person or persons.

All covenants and agreements herein set forth between the parties hereto shall extend to their heirs, executors, administrators, successors or assigns.

Witness the following signatures the day and year first above written.

S. W. BROWN,
Guardian of the Estate of Luia Love, nee
Billie, now Luia White, an Incompetent.

Witnesses:

JNO. F. KERRIGAN.
J. H. MCGONIGAL.

The above and foregoing lease is this 3rd day of January, 1916 by the court examined and approved concurrently with the order of confirmation thereof.

[SEAL.]

VICK S. DECKER,
Judge of the County Court of
Creek County, Oklahoma.

31 STATE OF OKLAHOMA,
County of Creek, ss:

On this third day of January, 1916, before me, the undersigned a notary public within and for the county and state aforesaid, personally appeared S. W. Brown, guardian of the estate of Luia Love, nee Billie, now Luia White, an incompetent, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal.

[SEAL.]

R. L. WILKINSON,
Notary Public.

My commission expires Oct. 23, 1917.

Filed for record at Tulsa, Oklahoma, the 4th day of Jan., 1916

[SEAL.]

LEWIS CLINE,
County Clerk.

By O. G. WEAVER,
Deputy.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, Lewis Cline, County Clerk, in and for the above named county and state, do hereby certify that the above and foregoing is a true and correct copy of an Oil and Gas Lease from S. W. Brown, Gdn to J. P. Williams as the same appears of record in this office and recorded in Book 155 at page 254.

Dated the 11th day of January, 1917.

LEWIS CLINE,
County Clerk.

"EXHIBIT I."

Whereas, The said County Court did on the 27th day of December, 1915, make an order of sale, directing the said guardian S. W. Brown, to sell at public sale to the highest and best bidder an oil and gas lease on the land of his said ward, for a term of five years and as much longer thereafter as oil or gas is found in paying quantities; and

Whereas, The said guardian sold said oil and gas lease to J. P. Williams on the 3rd day of January, 1916, as shown by his report of said sale to said court; and

Whereas, The said County Court did on the 3rd day of January, 1916, make an order confirming and approving said sale and ordering and directing the said guardian to execute a lease to said purchaser, in words and figures, to-wit:

"This cause coming on for final hearing before this court on this 3rd day of January, 1916, the same being a regular day of the January, 1916, term of said court, on the return of the guardian, S. W. Brown, and report of his proceedings under the order of sale heretofore made, and it having been proven that in pursuance of the said order of sale, as ordered by this court, the said guardian sold at public sale to J. P. Williams an oil and gas mining lease on the land of his said ward, situated in Tulsa County, State of Oklahoma, to-wit:

The South One-half (S. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section 36, Township 18, Range 12, and containing Twenty acres, more or less,

for five years from January 3rd, 1916, and as much longer thereafter as oil or gas is found in paying quantities, and it appearing to the said — that said purchaser, J. P. Williams has paid a cash bonus of \$5.00 per acre or a total of \$100.00 to the said S. W. Brown, as guardian, and it appearing that the said J. P. Williams is the highest and best bidder for said lease, and that said sale was made and conducted fairly and legally and in accordance with the order of this court, and it further appearing that the said bid of J. P. Williams, to-wit, the sum of \$5.00 per acre and royalty of one-eighth of all the oil produced and saved from the premises, or its equivalent in money, and the sum of \$15.00 per year for each gas well from which gas is marketed, is fair and adequate, and is not disproportionate to the value of said oil and gas lease, and that a greater sum cannot be obtained;

It is therefore order- and adjudged by the court that the said sale of the said oil and gas lease to the said J. P. Williams be confirmed and approved, and it is order- that the said guardian, S. W. Brown, execute to the said purchaser, J. P. Williams, an oil and gas lease and make return to this court for final action and approval.

Done in open court this 3rd day of January, 1916.

VICK S. DECKER,

Judge of the County Court of Creek County."

"EXHIBIT J."

75972.

Assignment of Oil and Gas Lease.

Know All Men by These Presents: That I, J. P. Williams, on the fourth day of January, 1916, for and in consideration of the sum of One Dollar and other valuable considerations, the receipt whereof is hereby acknowledged, do hereby assign, sell, transfer, and set over unto Western Rope and Cordage Company, a corporation, its successors or assigns, all my right, title and interest in and to an Oil & Gas Mining Lease, given and executed by S. W. Brown, as guardian of the estate of Lina Low, née Billie, now Lul White, an incompetent, to J. P. Williams, dated the third day of January, 1916, and recorded at Tulsa, Tulsa County, State of Oklahoma with the Register of Deeds, on the 4th day of January, 1916 in Book — of — page —, and covering the following described property to-wit:

The South One-half (S. 2) of the Southeast Quarter (S. E. 4) of the Northwest Quarter (N. W. 4) of Section Thirty-six in Township Eighteen of Range Twelve, lying and situate in Tulsa County Oklahoma.

To have and To Hold unto the said Western Rope and Cordage Company, its successors or assigns, according to the terms and condition in said lease. The said Western Rope and Cordage Company to perform all the conditions and covenants mentioned in said lease. That I am the lawful owner and holder of said oil and gas mining lease and the same is free from all incumbrances, and that I have good right and title to sell and assign the same.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

J. P. WILLIAMS.

STATE OF OKLAHOMA,

County of Tulsa, ss:

Before me, the undersigned, a notary public, in and for said county and state, on this fourth day of January, 1916, personally appeared J. P. Williams, to me personally known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses, purposes and considerations therein set forth. In witness whereof, I have hereunto set my hand and affixed my seal as such notary public, in the county and state aforesaid, on the fourth day of January, A. D. 1916.

[SEAL.]

M. E. HAMPE,
Notary Public.

My commission expires April 16, 1919.

Filed for record in Tulsa County, Oklahoma, Jan. 4, 1916, at 3:25 o'clock P. M.

[SEAL.]

LEWIS CLINE,
County Clerk.
O. G. WEAVER,
Deputy.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, Lewis Cline, County Clerk, in and for the county and
34 state above named, do hereby certify that the foregoing is a true
and correct copy of a like instrument now of record in my office
and recorded in Book 185, page 629.

Dated the 11th day of January, 1917.

[SEAL.]

LEWIS CLINE,
County Clerk.
By O. G. WEAVER,
Deputy.

"EXHIBIT K."

No. 89250.

Assignment of Oil and Gas Lease.

Whereas, On the seventh day of March, 1916, a certain oil and gas mining lease was made and entered into by and between J. P. Williams, of Jenks, Okla., lessor, and Western Rope and Cordage Company, a corporation, of Tulsa, Okla., covering the following described land in the County of Tulsa and State of Oklahoma, to-wit:

The South One-half ($\frac{1}{2}$) of the Southeast ($\frac{1}{4}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section Thirty-six (36), Township Eighteen (18), Range Twelve (12), and Northeast Quarter of the Northwest Quarter and the North Half of the Southeast Quarter of the Northwest Quarter Section Thirty-six (36), Township Eighteen (18), Range Twelve (12)——

Said lease being recorded in the office of the Register of Deeds in and for said County, in Book — page —, and

Whereas the said lease and all rights thereunder or incident thereto are now owned by Western Rope and Cordage Company, a corporation, of Tulsa, Oklahoma.

Now, therefore, For and in consideration of One Dollar (and other good and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owners, of the said lease and all rights thereunder or incident thereto, does hereby bargain, sell, transfer, assign and convey unto Anchor Oil Company, a Corporation, of Tulsa, Okla., all of our right, title and interest of the original lessee and present owner in and to the said lease and rights thereunder in so far as it covers the

The South One-half of the Southeast Quarter of the North-west Quarter of Section Thirty-six in Township Eighteen of Range Twelve,

together with all personal property used or obtained in connection therewith to Anchor Oil Company, a Corporation, of Tulsa, Okla., and their heirs, successors and assigns.

35 And for the same consideration, the undersigned for themselves, their heirs, successors, and representatives, does covenant with the said assignee, its heirs, successors, or assigns, that they are the lawful owners of the said lease and rights and interests thereunder and of the personal property thereon or used in connection therewith, that the undersigned has good right and authority to sell and convey the same, and that said rights, interest and property are free and clear from all liens, and incumbrances, and that all rentals and royalties due and payable thereunder have been duly paid.

In witness whereof, the undersigned owners, and assignor has signed and sealed this instrument this seventh day of March, 1916.

WESTERN ROPE & CORDAGE COMPANY,
B. M. GESSEL,

[SEAL.]

Sec.-Treas.

Acknowledgment of Corporation.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned, a notary public, in and for said county and state, on this 6th day of January, 1917, personally appeared B. M. Gessel, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument, as its Sec. Treasurer and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.]

CHAS. N. SIMON,
Notary Public.

My Commission expires June 3, 1918.

STATE OF OKLAHOMA,
Tulsa County, Tulsa, Okla.:

I hereby certify that this instrument was filed for record in my office on Jan. 8, 1917, at 10:30 o'clock A. M. and duly recorded in book —, page —.

LEWIS CLINE,
County Clerk.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, Lewis Cline, County Clerk, in and for the county and state above named, do hereby certify that the foregoing is a true and correct copy of a like instrument, now of record in my office and recorded in book —, page —.

Dated the 11th day of Jan., 1917.

LEWIS CLINE,
County Clerk.
O. G. WEAVER,
Deputy.

[SEAL.]

Endorsements: Civil No. 4241. Anchor Oil Company, a corporation, Plaintiff, vs. W. H. Gray, et al., Defendants.
36 Petition. Superior Court, State of Oklahoma, County of Tulsa. Jan. 18, 1917. Filed. Frank Ingraham, Court Clerk. C. B. Chenault and George T. Brown, Attorneys for Plaintiff.

And thereupon, on the same day, to-wit, on the 18th day of January, 1917, there was filed in said cause a Præcipe for Summons; which said Præcipe for Summons, together with all endorsements thereon, is in the words and figures following, to-wit:

Præcipe for Summons.

In the Superior Court of Tulsa County, State of Oklahoma.

No. 4241.

ANCHOR LINE OIL CO.

VS.

W. H. GRAY et al.

To the Clerk of said Court:

Issue Summons in the above entitled cause, and direct the same to the Sheriff of Tulsa County, State of Oklahoma, for the defendants W. H. Gray, F. D. McDonnell, F. C. Giddings, The Gulf Pipe Line Company, a corporation, to Sheriff Creek County, Okla.,

Amount claimed, \$100,000.00 and interest from the 6th day of June, 1916, at 6 per cent per annum.

Action brought for money judgment, damages, receiver, injunction.

Defendants required to answer on or before the 19th day of Feb., 1917.

Make summons returnable 29th day of January, A. D. 1917.
Dated this 19th day of January, A. D. 1917.

GEORGE T. BROWN,
C. P. CHENAULT,
Attorneys for Plaintiff.

Endorsements: No. 4241. Superior Court, Tulsa County, Okla. Præcipe for Summons. Superior Court, State of Oklahoma, County of Tulsa. Jan. 18, 1917. Filed. Frank Ingraham, Court Clerk. Issued.

And thereafter, to-wit, on the 19th day of January, 1917, a Summons was issued in said cause; which said Summons, together with all endorsements thereon, is in the words and figures following, to-wit:

37

Summons.

STATE OF OKLAHOMA,
Tulsa County, ss:

In the Superior Court.

No. 4241.

ANCHOR OIL COMPANY, Plaintiff,

vs.

W. H. GRAY et al., Defendant.

The State of Oklahoma, to the Sheriff of Tulsa County, Greetings:

You are Hereby Commanded to notify W. H. Gray, F. D. McDonnell, F. C. Giddings, The Gulf Pipe Line Company, a corporation, that they have been sued by Anchor Oil Co. in the Superior Court of Tulsa County, Oklahoma, and that Defendants must answer the petition of said Anchor Oil Co., filed against them in said Court, in the City of Tulsa, in said County, on or before the 19th day of Feb., 1917, or said petition will be taken as true and judgment rendered accordingly.

You will make due return on this summons on the 29th day of Jan., A. D. 1917.

In Witness Whereof, I have hereunto set my hand and fixed the seal of said Court in Tulsa, in said County, this 19 day of Jan., A. D. 1917.

FRANK INGRAHAM,
Court Clerk.

By HATTIE MAY PURDY,
Deputy.

[SEAL.]

Suit brought for Money judgment, damages, receiver and injunction.

If the defendant fail to answer, plaintiff will take judgment for the sum of \$100,000.00 with interest thereon at the rate of 6 per cent per annum from the 6 day of June, 1916, and cost of suit.

FRANK INGRAHAM,

Court Clerk.

By HATTIE MAY PURDY,

Deputy.

Sheriff's Return.

Received this writ Jan. 19, 1917, and served the same upon the following persons, defendants, within named, at the times following, to-wit:

W. H. Gray, Jan. 22, 1917;

F. D. McDonnell, Jan. 25, 1917;

F. C. Giddings, Jan. 22, 1917;

by delivering to each of said defendants, personally in said county, a true and certified copy of the within summons, with all the endorsements thereon.

Sheriff's Fees.

Service and return, first person	\$.50
Serving 3 additional persons75
4 copies Summons	1.00
Total	<u>\$2.25</u>

W. M. McCULLOUGH,

Sheriff.

By F. F. BOWLIN,

Deputy.

38 STATE OF OKLAHOMA,
Tulsa County, ss:

Received this writ this 19 day of Jan., 1917, and served the same on the within named Gulf Pipe Line Company, defendant corp., by delivering a copy thereof with all the endorsements thereon, duly certified by me to be a true copy thereof, to D. B. Catterlin, at Tulsa, County, on the 22 day of Jan., 1917, he being the Assistant Secretary of said defendant corporation at Tulsa County, Oklahoma, "no person being by said defendant corporation designated in said county upon whom summons can be served," and the president, chairman of the board of directors, or trustees, or other chief officer, cashier, treasurer, secretary or managing agent of said defendant corporation not being found in said county.

W. M. McCULLOUGH,

Sheriff.

By F. F. BOWLIN,

Deputy.

Endorsements: No. 4241. In Superior Court. Summons. Anchor Oil Co. vs. W. H. Gray, et al. Issued Jan. 19, 1917. Returnable Jan. 29, 1917. Ans. Due Feb. 19, 1917. C. P. Chenault & Geo. T. Brown. Superior Court, State of Oklahoma, County of Tulsa. Jan. 25, 1917. Filed. Frank Ingraham, Court Clerk.

And thereupon, on the same day, to-wit, on the 19th day of January, 1917, a Summons was issued in said cause; which said Summons, together with all endorsements thereon, is in the words and figures following, to-wit:

STATE OF OKLAHOMA,
Tulsa County, ss:

In the Superior Court.

No. 4241.

ANCHOR OIL COMPANY, Plaintiff,

vs.

W. H. GRAY et al., Defendant.

Summons.

The State of Oklahoma, To the Sheriff of Tulsa County, Greetings:

You Are Hereby Commanded to notify Charles Egan that they have been sued by Anchor Oil Co., in the Superior Court of Tulsa County, Oklahoma, and that Defendants must answer the petition of said Anchor Oil Co., filed against them in said Court, in the City of Tulsa, in said County, on or before the 19th day of Feb., 1917, or said petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 29th day of Jan., A. D. 1917.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court in Tulsa, in said County, this 19 day of Jan., A. D. 1917.

FRANK INGRAHAM,

Court Clerk.

By HATTIE MAY PURDY,

Deputy.

[SEAL.]

39 Suit Brought for Money judgment, damages, receiver and injunction.

If the defendant fail to answer, plaintiff will take judgment for the sum of \$100,000.00 with interest thereon at the rate of 6 per cent per annum from the 6th day of June, 1916, and cost of suit.

FRANK INGRAHAM,

Court Clerk.

Sheriff's Return.

STATE OF OKLAHOMA,

Tulsa County:

Received this Writ, Jan. 19, 1917, and served the same upon the following persons, defendants within named, at the times following, to-wit: Charles Egan, Jan. 23rd, 1917, by delivering to said defendants, personally in said county a true and certified copy of the within summons, with all the endorsements thereon.

Sheriff's Fees.

Service and return, first person.....	\$.50
1 copy Summons.....	.25
Total.....	\$.75

W. M. McCULLOUGH,

Sheriff.

By F. F. BOWLIN,

Deputy.

Endorsements: No. 4241. In Superior Court. Summons. Anchor Oil Co. vs. W. H. Gray, et al. Issued Jan. 19, 1917. Returnable Jan. 29, 1917. Ans. Due Feb. 19, 1917. C. P. Chenault & Geo. T. Brown. Superior Court, State of Oklahoma, County of Tulsa. Jan. 24, 1917. Filed. Frank Ingraham, Court Clerk.

And thereafter, to-wit, on the 20th day of January, 1917, Præcipe for Summons was filed in said cause, which said Præcipe for Summons, together with all endorsements thereon, is in the words and figures following, to-wit:

In the Superior Court of Tulsa County, State of Oklahoma.

No. 4241.

ANCHOR OIL COMPANY

vs.

W. H. GRAY et al.

Præcipe for Summons.

To the Clerk of Said Court:

Issue Summons in the above entitled cause, and direct the same to the Sheriff of Tulsa County, State of Oklahoma, for the defendants Charles Egan.

40 Defendants required to answer on or before the 20th day of February, 1917.

Make summons returnable 30th day of January, A. D. 1917.

Dated this 20 day of Jan., A. D. 1917.

GEORGE T. BROWN,
C. P. CHENAULT,

Attorney- for Plaintiff.

Endorsements: No. 4241. Superior Court, Tulsa County, Okla. Præcipe for Summons. Anchor Oil Co. vs. W. H. Gray et al. C. P. Chenault, Attorney. Superior Court, State of Oklahoma, County of Tulsa. Jan. 20, 1917. Filed. Frank Ingraham, Court Clerk. Issued.

And thereupon, on the same day, to-wit, on the 20th day of January, 1917, there was filed in said cause Notice of Application for Receiver; which said notice, together with all endorsements thereon, is in the words and figures following, to-wit:

STATE OF OKLAHOMA,
County of Tulsa, ss:

In the Superior Court for the County and State Aforesaid.

Civil. No. —.

ANCHOR OIL COMPANY, Plaintiff,

VS.

W. H. GRAY et al., Defendants.

Notice of Application for Receiver.

The defendants, W. H. Gray, Charles Egan, F. D. McDonnell, F. C. Giddings and the Gulf Pipe Line Company, a corporation, and each of them, are hereby notified that the plaintiff will, on the 29th day of January, 1917, at the hour of 9 o'clock A. M. of said day, at the court room of the above styled court in Tulsa, Oklahoma, apply to said court for an order appointing a Receiver in this action to take charge of, operate and conduct the business of producing oil and gas from the—

Amount claimed, \$1,000.00 and interest from the 6th day of June 1916, at 6 per cent per annum.

Action brought for money, damages, injunction, receiver.

East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East, in Tulsa County, Oklahoma;

and at said time and place will then and there introduce both
 41 oral and written testimony in behalf of the application for ap-
 pointment of a Receiver; and you, and each of you, will be
 governed accordingly.

ANCHOR OIL COMPANY,
 By GEO. T. BROWN,
 C. P. CHENAULT,
Attorneys for Plaintiff.

Endorsements: No. 4241. Anchor Oil Co. vs. W. H. Gray, et al.
 Notice of Application for Receiver. Superior Court, State of Okla-
 homa, County of Tulsa; Jan. 20, 1917. Filed. Frank Ingraham,
 Court Clerk.

And thereafter, to wit, on the 29th day of January, 1917, there was
 filed in said cause Notice of Petition for Removal; which said notice,
 together with all endorsements thereon, is in the words and figures
 following, to wit:

In the Superior Court in and for the County of Tulsa, State of Okla-
 homa.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS,
 and THE GULF PIPE LINE COMPANY, a Corporation, Defendants.

No. 4241, Civil.

Notice of Petition and Bond for Order of Removal.

To Messrs. C. P. Chenault and George T. Brown, Attorneys for Plain-
 tiff:

Please take notice that the defendants will, on the 29th day of
 January, 1917, at 9 o'clock A. M. or as soon thereafter as counsel
 can be heard, move the court for an order removing said cause to
 the District Court of the United States for the Eastern District of
 Oklahoma, in accordance with the petition and bond of defendants,
 copies of which are hereto attached.

Dated this 26th day of January, 1917.

C. S. WALKER AND
 WEST, SHERMAN & DAVIDSON,
 JAMES B. DIGGS,
Attorneys for Defendants.

Service of above notice is hereby acknowledged.

GEO. T. BROWN,
Att'y for Plf.
 C. P. CHENAULT,
 By G. T. B.

Endorsements: No. 4241 Civil. Anchor Oil Company, a Corporation, Plaintiff, vs. W. H. Gray, et al., Defendants. Notice of Petition for Removal. Superior Court, State of Oklahoma, County of Tulsa; Jan. 29, 1917, Filed. Frank Ingraham, Court Clerk. Law offices of West, Sherman & Davidson, 206-7-8 and 9, Palace Building, Tulsa, Okla.

And thereupon, on the same day, to wit, on the 29th day of January, 1917, there was filed in said cause a Petition for Removal; which said Petition for Removal, together with all endorsements thereon, is in the words and figures following, to wit:

In the Superior Court in and for Tulsa County, State of Oklahoma.

No. 4241, Civil.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS, and THE GULF PIPELINE COMPANY, a Corporation, Defendants.

Petition for Removal.

To the Honorable Judge of the Court aforesaid:

Your petitioners respectfully show that they are the defendants in this action, which is of a civil nature, in equity, and that the matter or amount in dispute exceeds the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs.

That said action is in equity, is of a civil nature, and arises under the Constitution and laws of the United States.

That the defendants, W. H. Gray, Charles Egan and F. C. Giddings, were, prior to the commencement of the above entitled action, and at the time of the commencement of such action, in possession and occupancy of the lands and the premises involved, which are more particularly described as the East Half (E. 2) of the Northwest Quarter (N. W. 4) of Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) East in Tulsa County, Oklahoma, under and by virtue of a certain departmental oil and gas mining lease, executed by Jennie Samuels, the original allottee of said land, a full-blood Creek Indian, enrolled opposite roll No. 5941, dated December 5, 1914, executed pursuant to the rules and regulations prescribed by the Secretary of the Interior, and duly approved by said Secretary of the Interior, and that a one-half interest therein of F. D. McDonnell was, on the 8th day of August, 1916, assigned to the defendant, F. C. Giddings, and thereafter, to wit, on the 5th day of September, 1916, the defendant F. C. Giddings assigned a one-fourth interest in and to said lease to the defendant W. H. Gray, and that said defendants, W. H. Gray, Charles Egan and F. C. Giddings were, prior to the time of, and at the time of the commencement of the above entitled action, engaged in working said property and in producing oil, and gas there-

from, and had drilled wells upon said premises for that purpose, and that the oil produced from said premises was being run to and taken by The Gulf Pipeline Company; that said oil and gas mining lease under which said operations were being prosecuted was taken, executed and approved under and pursuant to the Act of Congress approved May 27, 1908 (35 Stat. L. 312), entitled "An Act for the removal of restrictions from part of the lands of the allottees of the Five Civilized Tribes and for other purposes," and duly filed with the United States Indian Superintendent for the Five Civilized Tribes, January 5, 1915, in accordance with the provisions of the Act of Congress of March 1, 1907 (34 Stat. L. 1015) that

"The filing heretofore or hereafter of any lease in the office of the United States Indian Agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice,"

and as appears from the petition herein, long prior to the acquisition of any claim by the plaintiffs in said petition.

That said operations, consisting of the mining and production of oil from said property, were being carried on by said defendants, in conformity to the terms and provisions of said lease and of the rules and regulations of the Secretary of the Interior and the provisions of said Acts of Congress.

That this action is brought to have the plaintiff declared to be the owner of oil and gas mining leases and leasehold estates in and to the lands hereinbefore described, and the oil and gas in, under and upon the same, and entitled to the exclusive and sole possession of same for the purpose of appropriating and marketing the oil and gas therein and thereunder, and to declare that the defendants and each of them, and all persons claiming or to claim by, through or under them, be adjudged and declared to have no right, title, estate or interest in and to said property or any part thereof, and that the departmental oil and gas mining lease hereinbefore recited and the assignments thereof, be ordered cancelled of record, and that the defendants and each of them be adjudged and declared to have no power, authority or warrant to withhold the right of possession from plaintiff and that defendants and each of them be perpetually and forever forbidden and enjoined from interfering with the possession of the plaintiff in and to said property, and further enjoined and forbidden from entering into or upon said property or any part thereof, and for judgment

in behalf of plaintiff against the defendants for the sum of 44 One Hundred Thousand Dollars (\$100,000.00), representing the value of oil alleged to have already been taken from the premises, and such other sums as the court may find, and for the appointment of a receiver, pending the final termination of the suit, to take possession of the property involved, and to hold the proceeds therefrom, pending the final termination of said action.

That, as will more fully appear from the said petition, it is alleged therein that the original allottee, Jennie Samuels, died intestate, on the 11th day of October, 1915, leaving surviving her as her only heirs at law, Fency Rogers, née Sarkachee, a full-blood Creek Indian, duly enrolled opposite No. 5939, and Lina White, formerly Lina Lowe, née

Billie, also a full-blood Creek Indian, and that said property descended to said heirs under and by virtue of the Act of Congress of May 27, 1908, hereinbefore referred to, and that subsequent to the execution of the departmental oil and gas mining lease hereinbefore mentioned by Jennie Samuels, and subsequent to the filing thereof in the Union Agency at Muskogee, as hereinbefore stated, two certain leases of said property were made, one by the said Lina White, or Lina Lowe, and one by the said Feney Rogers, née Sarkachee, both of which said leases were approved by the County Court of Creek County, Oklahoma, under the authority of said Act of May 27, 1908, and that the plaintiff, Anchor Oil Company, has become the owner of said oil and gas mining leases, and that it now claims a right in and by virtue of said leases superior and paramount to any right, title or interest of these defendants or either of them, and that said plaintiff, Anchor Oil Company, is the only person or corporation entitled to develop and operate said lands for oil and gas and to extract therefrom the oil and gas lying therein and thereunder, and that the said departmental oil and gas mining lease under which these defendants are operating is wholly null and void, and of no force and effect.

That the question of the force and effect of said several Acts of Congress, as well as of the Enabling Act by which the State of Oklahoma was admitted into the Union, approved June 16, 1906, entitled "An Act to enable the people of Oklahoma and of Indian Territory to form a constitution and state government and be admitted to the Union on equal footing with the original states, etc." (34 Stat. L. 267) and the legal effect of the execution of the departmental oil and gas mining lease hereinbefore recited, whereunder these defendants are now prosecuting their operations for oil and gas mining purposes upon said lands and of the filing thereof in the Union Agency at Muskogee, and of the power and authority of the Secretary of the Interior to approve said lease, under said Acts of Congress, and of the effect of said approval, and the rights of these defendants under and by virtue of the making and filing of said lease as aforesaid, and the approval thereof, is directly involved, and that the whole controversy involved in this suit depends upon whether the said departmental oil and gas mining lease so taken under the authority of said Acts of Congress on said lands or the leases under which the plaintiff, Anchor Oil Company is now claiming, is superior in right, and of the power and authority of the Congress of the United States of America to regulate by law the matter of the leasing of lands by full-blood allottees in the Five Civilized Tribes for oil and gas mining purposes, all of which will more fully appear from the petition on file in this action and the exhibits thereto.

Your petitioners further respectfully state and show to the court that the plaintiff, Anchor Oil Company, is a corporation of the State of Oklahoma, and that the defendant, The Gulf Pipeline Company of Oklahoma, is also a corporation of the State of Oklahoma; that the defendants, F. D. McDonnell, Charles Egan and F. C. Giddings are also citizens and residents of the State of Oklahoma, but that the defendant, W. H. Gray, is not a citizen of the State of Oklahoma, but is a citizen and resident of the State of Texas, and is now, and was at

the time of the filing of the petition in this action, and had been for over 30 years prior to the filing of said petition, a citizen and resident of the State of Texas in the City of Houston, and that said defendant, W. H. Gray is still a citizen and resident of said City of Houston in said State of Texas.

That the time for your petitioners, the defendants in this action, to answer or plead to the petition in said action, has not yet expired, and will not so expire until the 19th day of February, 1917. Your petitioners have not filed any pleading therein, or in any way appeared therein.

That the controversy herein is between citizens of this state and a foreign state, in that the plaintiff, Anchor Oil Company, was at the time of the commencement of this suit and still is a citizen of the State of Oklahoma, and the defendant, W. H. Gray, was at the time of the commencement of this action and still is, a citizen and resident of the State of Texas, and that said defendant, W. H. Gray, desires to remove this suit before the trial thereof into the *United States District Court of the United States for the Eastern District of Oklahoma*.

6 Your petitioners further show that the causes of action that plaintiff has against the defendant, W. H. Gray, and the other defendants herein, are separable controversies and that said suit may be finally determined as between the plaintiff and said defendant, W. H. Gray, and complete relief afforded, without reference to the other defendants, for said suit is in substance and effect a suit to quiet title, and the interest of each of the said several defendants therein is a separate and distinct interest, and plaintiff could have brought suit against each of said defendants separately to try and determine the alleged rights asserted against them.

That the defendant, W. H. Gray, claims the ownership of a one-fourth interest in the departmental oil and gas mining lease hereinbefore referred to, said interest was acquired by assignment, separate and distinct from any of the other defendants, and is capable of being signed by said defendant, Gray, without his co-defendants joining therein, and that the interests of said W. N. Gray in said property is separate and distinct, and separable from the interests of his co-defendants, all of which will more fully appear from the petition filed herein and the exhibits to said petition.

Your petitioners herewith present a good and sufficient bond as provided by the statute in such cases, that they will enter in the District Court for the Eastern District of Oklahoma, within thirty days from the filing of this petition, a certified copy of the record in this suit, and for the payment of all costs which may be awarded by the said court if the said District Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioners therefore pray that this court proceed no further herein, except to make the order of removal as required by law, and accept the bond presented herewith and direct a transcript of the

record herein to be made by the clerk for said court as provided by law, and as in duty bound your petitioners will ever pray.

CHAS. F. EGAN,
F. D. McDONELL,
F. C. GIDDINGS,
W. H. GRAY,
THE GULF PIPELINE COMPANY
OF OKLAHOMA,

By JAMES B. DIGGS,
Attorney in Fact.

47 In the Superior Court in and for Tulsa County, State of Oklahoma.

No. 4241.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDonald, CHARLES EGAN, F. C. GIDDINGS, and
GULF PIPE LINE COMPANY OF OKLAHOMA, a Corporation, De-
fendants.

Affidavit.

James B. Diggs, being first duly sworn on oath, states:

That he has read the above and foregoing petition for removal, and he knows of his own knowledge the statement of facts in said petition contained to be true, and that he makes this affidavit for and on behalf of the Gulf Pipe Line Company of Oklahoma, and for the reason that he is the only agent, officer or employe of said company in the State of Oklahoma, who has personal knowledge of the facts therein stated.

JAMES B. DIGGS.

Subscribed and sworn to before me this 26 day of January, 1917.

[SEAL.]

W. S. LEVAN,

Notary Public.

My commission expires Aug. 14, 1920.

STATE OF OKLAHOMA,

County of Tulsa, ss:

W. H. Gray, F. D. McDonnell, Charles Egan, and F. C. Giddings, being each duly sworn, according to law, severally depose and say:

I am one of the petitioners in the above written petition for removal, and one of the defendants in the cause of action filed in the Superior Court of Tulsa County, State of Oklahoma, wherein Anchor Oil Company is plaintiff, and W. H. Gray, F. D. McDonnell, Charles Egan and F. C. Giddings and The Gulf Pipeline Company, a corporation, are defendants; that I have read the said petition and that the

matters and things set forth therein are true of my own knowledge, except in so far as the same constitute conclusions of law, as to which statements I verily believe them to be true.

CHAS. F. EGAN.
F. D. McDONELL.
F. C. GIDDINGS.
W. H. GRAY.

Subscribed and sworn to before me this 26th day of January, 1917.

[SEAL.]

RUTH DAVIDSON,

Notary Public.

My commission expires May 20, 1920.

Endorsements: No. 4241 Civil. Anchor Oil Company, a corporation, Plaintiff, vs. W. H. Gray, et al., Defendants. Petition
48 for Removal. Superior Court, State of Oklahoma, County of
Tulsa, Jan. 29 1917. Filed. Frank Ingraham, Court Clerk.
Law offices of West, Sherman & Davidson, 206-7-8 and 9, Palace
Building, Tulsa, Okla.

And thereupon, on the same day, to-wit, on the 29th day of January, 1917, there was filed in said cause a Bond; which said Bond, together with all endorsements thereon, is in the words and figures following, to-wit:

In the Superior Court in and for the County of Tulsa, State of
Oklahoma.

No. 4241, Civil.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS
and THE GULF PIPELINE COMPANY, a Corporation, Defendants.

Bond on Removal.

Know All Men by These Presents: That we, W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and The Gulf Pipeline Company of Oklahoma, a corporation, as principals, and The Massachusetts Bonding & Insurance Co., as surety, are held and firmly bound unto Anchor Oil Company, a corporation, plaintiff in the above entitled cause, its successors and assigns, in the sum of Five Hundred Dollars (\$500.00), lawful money of the United States of America, for the payment of which well and truly to be made, we and each of us bind ourselves and each of us, our heirs, successors, executors and administrators, jointly and severally by these presents.

The conditions of this obligation are such that:

Whereas, The said W. H. Gray, F. D. McDonnell, Charles Egan and F. C. Giddings, and The Gulf Pipeline Company, a corporation, have applied by petition to the Superior Court of the State of Oklahoma in and for the County of Tulsa, for the removal of a certain action therein pending, wherein Anchor Oil Company is plaintiff, and the said W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and The Gulf Pipeline Company, a corporation, are defendants, to the District Court of the United States for the Eastern District of Oklahoma, for further proceedings on grounds in said petition set forth, and that all further proceedings in said action in said Superior Court be stayed,

Now, Therefore, If your petitioners, the said W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and The Gulf Pipe Line Company a corporation, shall enter in said District Court of the

United States for the Eastern District of Oklahoma aforesaid,
 49 within thirty days from the filing of said petition, a certified copy of the record in said suit, and shall pay or cause to be paid all costs that may be awarded therein by said District Court in the Eastern District of Oklahoma, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise shall remain in full force and effect.

Signed at Tulsa, in Tulsa County, State of Oklahoma, this 25th day of January, 1917.

GULF PIPE LINE CO., OF OKLAHOMA.

By JAMES B. DIGGS,

Its Attorney in Fact.

CHAS. F. EGAN,
 F. D. McDONELL,
 F. C. GIDDINGS,
 W. H. GRAY,

Principals.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

[SEAL.]

By M. L. BRAGDON,

Attorney in Fact.

Approved:
 2-8-17,

[SEAL.] FRANK INGRAHAM,

Court Clerk.

By HATTIE MAY PURDY,

Deputy.

Endorsements: No. 4241 Civil. Anchor Oil Company, a corporation, Plaintiff, vs. W. H. Gray, et al., Defendants. Superior Court, State of Oklahoma, County of Tulsa; Jan. 28, 1917. Filed Frank Ingraham, Court Clerk. Bond. Law offices of West, Sherman & Davidson, 206-7-8 and 9, Palace Building, Tulsa, Okla.

And thereupon, on the same day, to-wit, on the 29th day of January, 1917, the following Order of Removal was entered in said cause, said Order being recorded in Journal No. 4 of said Court, at page 610 thereof:

In the Superior Court in and for the County of Tulsa, State of Oklahoma.

No. 4241, Civil.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS,
and THE GULF PIPE LINE COMPANY, a Corporation, Defendants.

Order of Removal.

This cause coming on for hearing upon the petition and bond of the defendants herein, for an order transferring this cause to the United States District Court for the Eastern District of Oklahoma,

and it appearing to the court that the defendants have filed
50 their petition for removal in due form of law, and that the defendants have filed their bond, duly conditioned, with good and sufficient sureties, as provided by law, and that defendants have given plaintiff due and legal notice thereof, and it appearing to the court that this is a proper cause for removal to said District Court.

Now, Therefore, Said petition and bond are hereby accepted, and it is hereby ordered and adjudged that this cause be and it is hereby removed to the United States District Court for the Eastern District of Oklahoma, and the clerk is hereby directed to make up the record in said cause for transmission to said court forthwith.

Done in open court this 29th day of January, 1917.

M. A. BRECKINRIDGE,

Judge.

Endorsed: Superior Court, State of Oklahoma, County of Tulsa,
Jan. 29, 1917. Filed. Frank Ingraham, Court Clerk.

In the Superior Court within and for the County of Tulsa, State of Oklahoma.

No. 4241.

ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY et al., Defendants.

Certificate of Clerk.

I, Frank Ingraham, court clerk within and for the County of Tulsa, do hereby certify that the above and foregoing is a full, true, correct and complete transcript of the record in the above entitled cause, as shown by the record of said court in said cause on file in my office.

Witness my hand and the seal of said court, this the 12 day of Feb., 1917.

FRANK INGRAHAM,
*Court Clerk in and for the County
of Tulsa, State of Oklahoma,*
By HATTIE MAY PURDY,
Deputy.

[SEAL.]

Endorsed: Filed Feb. 21, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 24th day of February, A. D. 1917, the Plaintiff filed Motion to Remand, which is in words and figures — follows:

In the United States District Court for the Eastern District of the State of Oklahoma.

Equity. No. —.

51 ANCHOR OIL COMPANY, a Corporation, Plaintiff,

vs.

W. H. GRAY, F. D. McDONNELL, CHAS. EGAN, F. C. GIDDINGS and
THE GULF PIPE LINE COMPANY OF OKLAHOMA, Defendants.

Motion to Remand.

Comes now the Anchor Oil Company, a corporation, plaintiff in the above entitled and numbered cause, and respectfully moves this Honorable Court for an order remanding said cause to the Superior Court within and for Tulsa County, Oklahoma, for trial, from whence it was removed, for the reasons following:

1.

Because said action is not one which could have been originally instituted in this court.

2.

Because there are no federal questions arising under the laws, treatise or Constitution of the United States involved to give this court jurisdiction to hear and determine this cause.

3.

Because both legal and equitable remedies are sought by the plaintiff in this action, and both legal and equitable causes of action being joined in its petition, which is permissible under the practice of the court of the State of Oklahoma, and that no federal question arises in either the legal or equitable causes of action declared upon by plaintiff in its petition, as appears from the face thereof.

4.

Because there is no controversy in this action between citizens of different states, said controversy being non-separable among the defendants herein, and all of said defendants being necessary and indispensable parties, in order to afford the relief demanded.

5.

Because this court has no jurisdiction of this action.

Wherefore, plaintiff prays that the said cause be by this court ordered remanded to the Superior Court of Tulsa County, at Tulsa, Oklahoma.

GEO. T. BROWN,
JOHN B. MESERVE,
C. P. CHENAULT,
Attorneys for Plaintiff.

Copy mailed to attorneys for defendants.

52 Endorsed: Filed Feb. 24, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 27th day of February, A. D. 1917, the defendants W. H. Gray, F. D. McDonnell, Charles Egan and F. C. Giddings filed Motion to Dismiss, which is in words and figures as follows:

Motion to Dismiss.

Now come the defendants, W. H. Gray, F. D. McDonnell, Chas. Egan and F. C. Giddings, and move to dismiss the complainant's bill for the reason that it fails to state any matter of equity entitling the complainant to the relief prayed for, and fails to state any facts sufficient to entitle the complainant to any relief against the defendants.

C. S. WALKER,
WEST, SHERMAN & DAVIDSON,
*Attorneys for Defendants, W. H. Gray, F. D.
McDonnell, Chas. Egan and F. C. Giddings.*

Endorsed: Filed Feb. 27, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 8th day of June, A. D. 1917, the same being one of the days of the Special Session of the United States District Court for the Eastern District of Oklahoma held at Muskogee, Oklahoma, Court met pursuant to adjournment. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day is the following:

Order Overruling Motion to Remand and Submitting Motion to Dismiss.

Now on this 8th day of June, 1917, it is ordered that motion to remand is overruled. Motion to dismiss submitted. Defendant given 15 days to file brief. Plaintiff given 15 days thereafter to file answer brief. United States Attorney given leave to file brief in 15 days. It is further ordered that plaintiff is hereby given leave to amend its bill by interlineation.

53 And, to-wit, on the 21st day of June, A. D. 1917, the defendant Gulf Pipe Line Company filed its Motion to Dismiss which is in words and figures as follows:

Motion.

Comes now the Gulf Pipe Line Company of Oklahoma, sued under the name of the Gulf Pipe Line Company, and moves the court to dismiss the above styled action, and for grounds thereof, adopts the motion heretofore filed in this cause by the other defendants and asks that the same be treated as its motion the same as if the identical grounds were herein set out.

JAMES B. DIGGS,
RUSH GREENSLADE,
WILLIAM C. LIEDTKE,
*Attorneys for Gulf Pipe Line
Company of Oklahoma.*

Endorsed: Filed Jun- 21, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 17th day of July, A. D. 1917, the parties hereto filed Stipulation that the Amendment to the Petition shall be considered a part of the original bill, which Stipulation is in words and figures as follows:

Stipulation.

It is agreed between the parties plaintiff and defendants, that the pleading filed herein on the — day of July, 1917, styled "Amendment to Petition" is and shall be a part of the original petition and each paragraph thereof, and that the two pleadings contain the statements of alleged cause of action of plaintiff against defendants and shall be so treated and considered by the court in the trial of this action and the trial shall be had and judgment rendered as if the two pleadings constituted the original petition in this action; that all motions, demurrers, objections made or addressed to or affecting, or relating to the "Petition" or "Bill" shall be treated as applying to both as a whole.

54 This agreement is made with the knowledge, consent and acquiescence of the court.

C. P. CHENAULT,
GEO. T. BROWN,
JOHN B. MESERVE,

Attorneys for Plaintiff.
WEST, SHERMAN & DAVIDSON.

Attorneys for Defendants.

Endorsed: Jul. 17, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit on the 17th day of July, A. D. 1917, the Plaintiff herein filed Amendment to Petition, which is in words and figures as follows:

Amendment to Petition.

Comes now the plaintiff, Anchor Oil Company, under leave of Court and agreement of parties, and amends its original petition, or bill herein and for cause of action, reiterates, re-states, and adopts each and every allegation, averment and statement contained and set forth in its original petition and each paragraph thereof and makes the hereinafter statements, averments and allegations a part of said original petition and each paragraph thereof the same as if said allegations, averments and statements were fully copied and set forth therein. Plaintiff says that before and at the time of the purchase by it of its leasehold estate in said lands described in the original petition, from said Fency Rogers and Lina Lowe White, it had no information, knowledge or notice of the alleged lease of defendants or defendants' assignors and no information, knowledge

or notice of any rights, claims or interests of defendants or their assignors, in or to or about said lands and plaintiff acquired all of its alleged rights, interests and leasehold estate in said lands without information, notice or knowledge of any rights, claims or interests that defendants or their assignors had or may claim to have in said land whatsoever.

Plaintiff says that at and before the time defendants, their assignors entered upon said land and before drilling or developing said land for oil or gas or both, the defendants and their assignors had full knowledge and notice of plaintiff's lease, leasehold estate, rights, interests and claims, as herein set out and had written notice of plaintiff's rights, interests, claims and lease aforesaid, served on and delivered to them, their assignors, a copy of which

55 written notice is filed herewith as part hereof, same as if fully copied herein, and marked "Exhibit X."

Plaintiff files, herewith, as part hereof the same as if fully copied herein, a certified copy of the alleged lease under which defendants, their assignors claim right, title and interest in and to the land, oil and gas leasehold estate in said land, marked "Exhibit Y," and plaintiff says that defendants, and each of them, claim some right, title and interest in and to said land, lease, oil and gas leasehold estate in said land, adverse and paramount to the rights, claims, interests and oil and gas lease and oil and gas leasehold estate in and to said land, to plaintiff's rights, claims, interests, leases and leasehold estate, aforesaid.

Plaintiff says that it, the Anchor Oil Company at times herein mentioned, was the real owner and purchased of the rights, interests, leases and oil and gas leasehold estate in and to said land and the purchase and taking of legal or paper title by Williams and assignments to Western Rope and Cordage Company, was for the use and benefit of Anchor Oil Company; it paid the money and considerations for same, though the legal or paper title was taken in the name of ——— and Western Rope & Cordage Company, as hereinbefore alleged.

Wherefore, Plaintiff prays, as in its original petition, and for all proper relief to which in law or equity it may appear to be entitled.

C. P. CHENAULT,
GEO. T. BROWN,
JOHN B. MESERVE,
Attorneys for Plaintiff.

56

Copy.

"EXHIBIT X."

Tulsa, Okla., July 28, 1916.

To F. D. McDonnell and Charles Egan,
Tulsa, Oklahoma.

You and each of you are hereby notified that the undersigned, Anchor Oil Company, claims the ownership of a valid and existing

oil and gas lease in, on and to the following described premises situated in Tulsa County, Oklahoma, to-wit:

The North 60 Acres of the East Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 36, Township 18 North, Range 12 East, and also the South 20 Acres of the East Half ($\frac{1}{2}$) of said Northwest Quarter ($\frac{1}{4}$) of Section 36, township 18 N., Range 12 East.

The undersigned company has just been informed that you jointly claim to own an oil and gas lease on the above described premises, and have entered upon said premises and are now drilling thereon for oil or gas.

You are hereby notified by the undersigned Anchor Oil Company to cease any operations that you may be carrying on said land, and remove all property belonging to you therefrom.

If you fail, neglect or refuse to observe and comply with this notice and proceed to continue or carry on any operations on said premises, you do so at your peril, and the Anchor Oil Company will hold you responsible in the matter.

Yours truly,

ANCHOR OIL COMPANY.
By B. M. GESSEL.

"EXHIBIT Y."

Quadruplicate 31181.

8892.

Form A. Series 1908.—Approved April 20, 1908.

Amended February 6, and June 29, 1911. 5-25-16—10M.

Oil and Gas Mining Lease upon Land Selected for Allotment.

83173.

Creek Nation, Oklahoma.

This Indenture of lease, made and entered into in quadruplicate on this 5th day of December, A. D. 1914, by and between Jennie Samuels, of Sapulpa, enrolled as a full-blood citizen of the Creek Nation, Roll No. 5941, party of the first part, hereinafter designated as lessor, and F. D. McDonnell and Charles Egan, of Tulsa, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908, (35 Stat. L. P. 312) Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed and performed by the lessee, does hereby demise, grant, lease and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to-wit: The East Half of the Northwest Quarter of section 36, township 18, range 12 of the Indian Meridian, and containing Eighty (80) acres, more or less,

with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease: Provided, further, That in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there shall be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of
 58 discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for lessor, as advanced annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance, for the first and second years; thirty cents per acre per annum, annually, in ad-

vance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligations to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be off-set if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a

workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boiler, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

60 6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property and also upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, further, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

61 11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the household premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the First National Bank of Sapulpa, Okla., or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Attest:

JESSIE SAMUELS.	her thumb mark	[SEAL.]
F. D. McDONELL.		[SEAL.]
CHARLES EGAN.		[SEAL.]

Two witnesses to execution by lessor:

GEO. M. McDANIEL,
P. O., Sapulpa, Okla.
ROBERT ROGERS,
P. O., Sapulpa, Okla.

Two witnesses to execution by lessee:

R. M. HUNTER,
P. O., Tulsa, Okla.
J. N. HUNTER,
P. O., Tulsa, Okla.

62 STATE OF OKLAHOMA,
County of Creek, ss:

Before me, a Notary Public in and for said county and state, on this 5th day of December, 1914, personally appeared Jennie Samuels to me known to be the identical person who executed the within and foregoing lease, by her mark, in my presence and in the presence of Geo. M. McDaniel & Robert Rogers, as witnesses *as witnesses*, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

[SEAL.]

LEVI M. JONES,
Notary Public.

My commission expires May 29, 1917.

Department of the Interior, Office of the Superintendent for the Five Civilized Tribes. Muskogee, Okla., Oct. 14, 1915. The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date. Joe H. Strain, Acting Superintendent for the Five Civilized Tribes.

Department of the Interior, Office of Indian Affairs, Washington, D. C., Oct. 20, 1915. Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved. E. B. Merett, Assistant Commissioner.

Department of the Interior. Washington, D. C., Oct. 21, 1915. Approved. Bo. Sweeney, Assistant Secretary of the Interior.

Filed in the office of the Superintendent for the Five Civilized Tribes this 5 day of Jan., 1915, at 1 o'clock P. M. Gabe E. Parker, Superintendent, By D. W. Poor, Cashier.

Bonus, \$75.00; Advance Royalty Received, \$12.00; Total, \$87.00.

(Endorsements.)

Received Sup. 5 Civ. Tribes, Jan. 5, 1915. Enclosure to No. 1472.
Received Sup. 5 Civ. Tribes Oct. 29, 1915. Enclosure to Dept. No 6722.

Office of Indian Affairs, Received Oct. 18, 1915. 111696. Royalty No. 40917.

31181. Original. Department of the Interior, Gabe E. Parker, Superintendent, Muskogee, Okla: We, F. D. McDonell and Chas. Egan, hereby certify that we each own an undivided one-half interest

in the Oil and Gas Mining Lease given by Jennie Samuels on the 5th day of December, 1914, covering the East $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of Section 36, Township 18, Range 12, East containing eighty acres. F. D. McDonell, Charles Egan. Received Supt. 5 Civ. Tribes, Feb. 10, 1915, enclosure to No. 15276.

Filed for record Tulsa County, Oklahoma, Aug. 10, 1916, at 4:20 o'clock P. M. (Seal) Lewis Cline, County Clerk. By O. G. Weaver, Deputy.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, Lewis Cline, County Clerk, in and for the above named County and State, do hereby certify that the above and foregoing is a true and correct copy of an Oil and Gas Lease from Jennie Samuels to F. D. McDonell and Charles Egan as the same appears of record in this office and recorded in Book 167 at page 148.

Dated the 11th day of Jan., 1917.

LEWIS CLINE,

County Clerk,

By O. G. WEAVER,

Deputy.

[SEAL.]

Endorsed: Filed Jul. 17, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to wit, on the 19th day of February, A. D. 1918, the court filed its opinion herein, which is in words and figures as follows:

Memorandum Decision.

CAMPBELL, D. J.:

This matter is pending on defendants' motion to dismiss which was heretofore argued orally and submitted upon briefs of counsel to be supplied, which have been filed and considered. In its amended petition the plaintiff sets forth a copy of the departmental lease under which the defendants claim, from which it appears that the full-blood Creek allottee, Jennie Samuels on December 5, 1914, executed this oil and gas lease to the defendants McDonell and Egan; that it was filed for record in the office of the Superintendent for the Five Civilized Tribes on January 5, 1915. It also appears that having taken the usual course through the department, it was approved by the Assistant Secretary of the Interior on October 21, 1915. The petition alleged that the allottee, Jennie Samuels, died on October 11, 1915, ten days before the lease was approved. The plaintiff de-
raigns its title from certain alleged heirs of Jennie Samuels,
whose conveyances are all dated subsequent to October 21,
1915, the date of the approval by the Secretary of the Interior of the lease under which the defendants claim. If the filing of this lease with the Superintendent for the Five Civilized Tribes on January 5, 1915, amounted to constructive notice to the world of its existence, and the death of the lessor, Jennie Samuels, prior to the actual approval of the lease by the Secretary of the Interior did not

affect the validity of such approval or the lease as so approved, then upon the face of the pleadings it appears the plaintiff is not entitled to the relief sought.

The questions here involved were decided by the Supreme Court of this state in an opinion recently filed, *Scioto Oil Co. v. O'Hern*, 169 Pac. 483, in which, as appears from the syllabi, the court held:

"Section 2, Art. 25, Williams' Ann. Const., which extended all laws in force in Oklahoma Territory to the State of Oklahoma, including the laws regulating the recordation of instruments affecting the title to real estate, did not repeal Act Cong. March 1, 1907, c. 2285, 34 Stat. 1015, which provided that the filing of any lease in the office of the United States Indian agent, Union Agency, Muskogee, Ind. T., shall be deemed constructive notice, but said Act of March 1, 1907, survived, and an oil and gas lease filed in accordance therewith is effectual to impart notice to all persons subsequently dealing with the lands therein described.

Where C., a full-blood Creek citizen, executed an oil and gas lease upon his allotted land which lease was filed in the office of the United States Indian agent, Union Agency, at Muskogee, and C. died before its approval by the Secretary of the Interior, and the heirs of C. thereafter conveyed said lands by deed duly approved by the County Court, after which said lease was approved by the Secretary of the Interior, held, that the approval related back to the date of the lease, and the grantors in the deeds by the heirs of C. take title subject to said lease."

This I consider a well reasoned and well supported decision, and in my judgment states the law. The motion to dismiss will be sustained and the bill dismissed.

RALPH E. CAMPBELL,

Judge.

Endorsed: Filed Feb. 19, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

65 And, to-wit, on the 26th day of February, A. D. 1918, the following proceedings were had in this cause, Honorable Ralph E. Campbell, Judge presiding:

Order.

Now on this 26th day of February, 1918, comes on the above entitled and numbered cause for decision upon the motion of defendants to dismiss the plaintiff's bill herein, which said motion was submitted and orally argued in this court, on the 8th day of June, A. D. 1917, and taken under advisement by the court. The plaintiff at said time appearing by its attorneys, C. P. Chenault, George W. Brown and John B. Meserve, and the defendants appearing by their attorneys, C. S. Walker and West, Sherman & Davidson.

And it appearing to the court that the plaintiff, by leave of court, has amended its bill herein, and that the parties have stipulated and agreed that the original bill and the amendment thereto, styled amended petition, together contain the statements of the alleged cause

of action of plaintiff against defendants and shall be so treated and considered by the court, as if the two pleadings constituted the original petition in this action, and that all motions, demurrers and objections made or addressed to, or affecting or relating to, the petition or bill, shall be treated as applying to both as a whole.

And the court, being well and sufficiently advised in the premises,

It is, by the Court, Considered, Ordered, Adjudged and Decreed That the motion of defendants to dismiss the bill of complainant herein as amended be, and the same is hereby, sustained, and that said bill of complainant as so amended be, and the same is hereby, dismissed, and that the complainant, Anchor Oil Company, go hence without day. To which judgment, order and decree sustaining the said motion to dismiss, and dismissing the said bill of complaint as amended herein, the Anchor Oil Company, by its counsel, objected and excepted, and its exception is allowed.

RALPH E. CAMPBELL,

Judge.

O. K.

C. P. CHENAULT,

Att'y for Plff.

Endorsed: Filed Feb. 26, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 10th day of April, A. D. 1918, the Plaintiff filed Petition for Allowance of Appeal, together with his Assignment of Errors, which Appeal was allowed by the Court. Said Petition for Allowance of Appeal, Assignment of Errors and Order Allowing Appeal are in words and figures as follows:

Petition for Appeal.

The above named plaintiff conceiving itself aggrieved by the decree made and entered on the 28th day of February, 1918, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reason specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

GEO. T. BROWN,

JOHN B. MESERVE,

Attorneys for Plaintiff.

The foregoing claim of appeal is allowed in open court this 10th day of April, 1918.

RALPH E. CAMPBELL,

District Judge.

Endorsed: Filed Apr. 10, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Assignment of Errors.

Comes now the plaintiff in the above entitled cause, By George T. Brown and John B. Meserve, its attorneys, and says that the decree in said cause is erroneous and against the just rights of said plaintiff for the following reasons, and that the court erred:

I.

In overruling the motion of the plaintiff to remand this cause to the Superior Court of Tulsa County, State of Oklahoma, wherein said cause was originally lodged.

II.

In not sustaining the motion of the plaintiff to remand this cause to the Superior Court of Tulsa County, State of Oklahoma.

67

III.

In the sustaining of the defendants' motion to dismiss plaintiff's petition.

IV.

In not overruling the motion of the defendants to dismiss plaintiff's petition filed herein.

V.

In dismissing plaintiff's petition out of this court.

VI.

In holding that the Secretary of the Interior had the power, after the death of the full-blood Indian lessor, to approve an oil and gas mining lease made by said full-blood Indian during his lifetime.

VII.

In holding that on the 5th day of January, 1915, the filing of an oil and gas mining lease with the Superintendent of the Five Civilized Tribes amounted to constructive notice.

VIII.

In holding that the death of a full-blood Indian lessor prior to the actual approval of an oil and gas mining lease by the Secretary of the Interior did not affect the validity of such approval or the lease so approved.

IX.

In rendering judgment in favor of the defendants and against the plaintiff.

Wherefore, the plaintiff prays that the said decree be reversed, and that the said court may be directed to reinstate said cause and the petition so dismissed in the United States Court for the Eastern District of Oklahoma.

GEO. T. BROWN,
JOHN B. MESERVE,
Attorneys for Plaintiff.

Endorsed: Filed Apr. 10, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

4 2

68

Citation.

UNITED STATES OF AMERICA,
Eastern District, State of Oklahoma, ss:

To W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Eighth Circuit, to be held at the City of Saint Louis, State of Missouri, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Eastern District of Oklahoma, wherein the Anchor Oil Company, a corporation is appellant, and W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a corporation, are appellees, to show cause, if any there be, why the judgment in said appeal mentioned shall not be corrected and speedy justice should not be done to the appellants in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 10th day of April, 1918, and the independence of the United States, one hundred forty-two.

RALPH E. CAMPBELL,
*United States District Judge for
the Eastern District of Oklahoma.*

Attest:

_____,
District Clerk,

By _____,
Deputy.

UNITED STATES OF AMERICA,
Eastern District, State of Oklahoma, ss:

We, the undersigned, attorneys of record for the appellees in the above entitled matter, hereby accept service of the above citation this 10th day of April, 1918.

WEST, SHERMAN, DAVIDSON & MOORE,
Attorneys for Appellees.

Præcipe for Record.

To R. P. Harrison, Clerk of the Above Named Court:

You are requested to make a transcript of the record in the above entitled cause, to be printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to appeal allowed in said cause; to include in such transcript of record the following and no other papers.

1. Transcript from state court, filed February 21, 1917.
2. Motion to remand, filed February 24th, 1917.
3. Motion to dismiss, filed by W. H. Gray, F. D. McDonnell, Charles Egan and F. C. Giddings, filed February 27th, 1917.
4. Order overruling motion to remand and submitting to the court motion to dismiss.
5. Motion to dismiss filed by Gulf Pipe Line Company, June 21st, 1917.
6. Stipulation that amended petition shall be considered a part of the original bill, filed July 17th, 1917.
7. Amended petition filed July 17th, 1917.
8. Opinion of the court on motion to dismiss.
9. Order sustaining motions to dismiss and dismissing bill of complaint.
10. Petition for allowance of an appeal.
11. Assignment of errors.
12. Order allowing appeal.
13. Citation, with service.
14. Notice and election as to printed record (with service).
15. Certificate of clerk to record.

GEO. T. BROWN,
JOHN B. MESERVE,
Attorneys for Plaintiff.

We, the undersigned, attorneys for the defendants herein, do hereby acknowledge receipt of the above designation of parts of the record necessary for the consideration of the errors assigned by the plaintiff, and waive the designation of any other part or parts of the record, and agree that the above includes all of the portions of said record material or necessary for the consideration of the errors assigned.

Dated this 10th day of April, 1918.

WEST, SHERMAN, DAVIDSON
& MOORE,
Attorneys for Defendants.

Endorsed: Filed Apr. 16, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Election as to Printing Record.

70 The plaintiff herein elects to have a transcript of the record in the above cause printed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma, and respectfully requests that said transcript in said cause be printed as required by law under this election.

GEO. T. BROWN,
JOHN B. MESERVE,
Attorneys for Plaintiff.

Service of the above election as to printing record is acknowledged this 10th day of April, 1918.

WEST, SHERMAN, DAVIDSON
& MOORE,
Attorneys for Defendants.

Endorsed: Filed Apr. 16, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of Anchor Oil Company v. W. H. Gray et al., Equity No. 2385, as was ordered by præcipe of counsel herein to be prepared and authenticated as the same appears from the records in my office.

I further certify that the Citation attached hereto and returned herewith is the original citation issued in this case.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in the City of Muskogee, this 29th day of May, A. D. 1918.

[SEAL.]

R. P. HARRISON,

Clerk,

By H. E. BOUDINOT,

Deputy.

71 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(Appearance of Mr. George T. Brown and Mr. John B. Meserve as Counsel for Appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5177.

ANCHOR OIL COMPANY, Appellant,

vs.

W. H. GRAY et al.

The Clerk will enter my appearance as Counsel for the Appellant.

GEORGE T. BROWN.

JOHN B. MESERVE.

* (Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun-7, 1918.

(Appearance of Mr. C. S. Walker, Mr. Rush Greenslade, Mr. William C. Liedtke and Meers. West, Sherman, Davidson & Moore as Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

C. S. WALKER,
PRESTON C. WEST,
A. A. DAVIDSON,
ROGER S. SHERMAN,
GREY MOORE,

For Appellees Gray, McDonnell, Egan and Giddings.

RUSH GREENSLADE,
WILLIAM C. LIEDTKE,

For Gulf Pipe Line Co. of Okla.

72 (Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 10, 1918.

(Appearance of Mr. James B. Diggs as Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.
JAMES B. DIGGS.

(Endorsed :) Filed in U. S. Circuit Court of Appeals, Sep. 11, 1918.

(Appearance of Mr. C. P. Chenault as Counsel for Appellant.)

The Clerk will enter my appearance as Counsel for the Appellant.
C. P. CHENAULT,
Suite, 307 Cosden Bldg.,
Tulsa, Okla.

(Endorsed :) Filed in U. S. Circuit Court of Appeals, Dec. 17, 1918.

(Order of Submission.)

December Term, 1918.

Tuesday, December 17, 1918.

This cause being this day called for hearing, argument was commenced by Mr. George T. Brown for appellant, continued by Mr. Preston C. West for appellees and concluded by Mr. George T. Brown and Mr. C. P. Chenault for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

73

(Opinion.)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1918.

No. 5177.

ANCHOR OIL COMPANY, a Corporation, Appellant,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS and
GULF PIPE LINE COMPANY, a Corporation, Appellees.

Appeal from the District Court of the United States for the Eastern
District of Oklahoma.

Mr. George T. Brown and Mr. Courtland P. Chenault (Mr. John B. Meserve was with them on the brief), for appellant.

Mr. Preston C. West (Mr. A. A. Davidson, Mr. C. S. Walker and Mr. James B. Diggs were with him on the brief), for appellees.

Before SANBORN and STONE, Circuit Judges, and TRIEBER, District Judge.

SANBORN, *Circuit Judge*, delivered the opinion of the Court.

This case involves the validity of three oil and gas mining leases of eighty acres of land, one made on December 5, 1914, by Jennie Samuels, a full-blood Creek Indian, the allottee and grantee thereof, who died on October 11, 1915. This lease was filed in the office of the United States Indian Agent, now the office of the Superintendent of the Five Civilized Tribes, Union Agency, at Muskogee, Oklahoma, on January 5, 1915, was approved by the Secretary of the Interior on October 21, 1915, and was first filed for record in the office of the County Clerk or Register of Deeds of the county in which the land is situated, on August 10, 1916. The defendants and appellees own this lease, and are in possession of and claim the right to mine the land for oil and gas thereunder.

The plaintiff and appellant, a corporation, claims a like right under two oil and gas mining leases, which it owns of sixty and twenty acres of this land made respectively by Feney Rogers and Lina White, full-blood Creek Indians and the sole heirs of Jennie Samuels. These leases were approved by the County Court having jurisdiction of the settlement of the estate of Jennie Samuels during the months of December, 1915, and January, 1916, and were recorded in the office of the County Clerk or Register of Deeds of the county where the land is situated prior to August 10, 1916, when Jennie Samuels' lease was first recorded and the lessees under the leases of Feney Rogers and Lina White, had no actual notice of the lease of Jennie Samuels until after they had respectively purchased and paid value for them in good faith. The facts which have been recited were disclosed by the petition of the plaintiff in which he prays for possession of the land, for an adjudication of the invalidity of the lease of Jennie Samuels, of the validity of the leases of her heirs, and for a recovery of damages on account of the possession and use of the land by the defendants. The court below dismissed the petition upon the motion of the defendants on the ground that the lease of Jennie Samuels was valid, and that the defendants' possession and their mining of the land thereunder were lawful.

Counsel for the plaintiff assail this conclusion on the ground that the Secretary was without jurisdiction or authority to approve the lease of Jennie Samuels, a full-blood Creek Indian, after her death, and that as his approval was not made until ten days after she died, her lease became void. In support of this position they argue that the authority of the Secretary to approve and thereby to perfect oil and gas mining leases of their allotments by full-blood allottees of the

Creek Tribe, which was granted by Section 20 of the Act of April 26, 1906, 34 Statutes 135, 137, 145, ceased at the death of the allottee, by reason of the provision of Section 9 of the Act of May 27, 1908, 35 Statutes 315, "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions

upon the alienation of the said allottee's land: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the Court having jurisdiction of the settlement of the estate of said deceased allottee". But where the validity of a conveyance of land or of leases thereof is conditioned by the approval of different officers or by different restrictions at different times, the law in force at the time of the deed or lease determines the restriction upon its validity, and where at that date a specified officer is empowered to approve and validate it, that officer or his successor in office, may lawfully do so after subsequent legislation has conditioned the validity of like conveyances or leases with the approval of a different officer or with different restrictions, and the true construction of Section 9 of the Act of May 27, 1908, is that it is prospective, and not retrospective in effect that it applies to conveyances and leases made after its passage and is inapplicable to those made before its enactment, and that the Secretary of the Interior had plenary authority to approve and validate the lease of Jennie Samuels after her death notwithstanding the provision of Section 9 of the Act of May 27, 1908. *Scioto Oil Co. v. O'Hern*, 169 Pac. (Okla.) 483; *Harris v. Bell*, and authorities cited in 250 Fed. at page 214.

Counsel insist, however, that the Secretary's power to approve the lease ceased because under Section 9 of the Act of 1908 the death of the lessor removed all restrictions upon alienation of the land. But that removal did not change the status of Jennie Samuels' lease, did not remove the restriction upon the alienation by her, for those restrictions persisted until she died and she could not alienate her land after her death. She had leased her land subject only to the approval of the Secretary, and her heirs so far as her lease was concerned stepped into her shoes upon her death. The lease estopped them as it did her from revoking it or conveying the land free from it, unless the Secretary, in the exercise of his judicial discretion, refused to approve it, and, when he approved it the estoppel became absolute upon all of them alike.

76 The only restrictions on alienation removed by her death were the restrictions on the alienation of the rights in the land which descended to her heirs upon her death and those rights were inferior and subject to the rights of the lessees of Jennie Samuels to the full benefit of the lease if it was subsequently approved by the Secretary.

It was so approved and then the lease became impregnable to the attacks of the heirs and those claiming under them with notice of the conditional lease. *Scioto Oil Co. v. O'Hern*, 169 Pac. (Okla.) 483; *Almeda Oil Co. v. Kelley*, 130 Pac. (Okla.) 931; *Pickering v. Lomax*, 145 U. S. 310; *Lykins v. McGrath*, 184 U. S. 169. Another contention of counsel for the plaintiff is, that the lease of Jennie Samuels was inferior in right to the leases of her heirs, (1) because it did not take effect until it was approved by the Secretary and that approval was made after the leases of her heirs had been made and had been duly approved and (2) because the lease of Jennie Samuels itself provided that the term thereof should be ten years from the date of its approval by the Secretary of the Interior and that "In event restric-

tions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease." But whether or not the lease of Jennie Samuels was inferior to the lease of her heirs depends upon the question whether or not the lessees in the latter lease had constructive notice of the former lease, a question which will be hereafter considered. There was nothing in her lease or in the conduct of the parties to it, to indicate any bad faith or any attempt to evade the restrictions on alienation imposed by the Act of Congress, and her lease was neither void nor voidable because the parties made and delivered it subject to the approval of the Secretary before the term of the lease commenced to run. Subject to that approval the parties to this lease, by the execution and delivery thereof estopped themselves and those claiming under them with notice of the lease, from denying, revoking or avoiding it when approved by the Secretary, except for fraud or mistake. And, when it was approved by the Secretary as

77 against the parties to it and those claiming under them with notice, it related back to and took effect as of the date of its execution by the parties named therein. *Pickering v. Lomax*, 145 U. S. 310, 314, 316; *Lomax v. Pickering*, 173 U. S. 26, 27; *Lykins v. McGrath*, 184 U. S. 169, 171, 172.

Nor is there anything in the clause of the lease regarding the removal of all restrictions to reverse or modify this result because all restrictions on alienation of the land never were removed until the Secretary approved the lease. The death of Jennie Samuels did not remove but perpetuated the restriction of her alienation of her land, for, after she died the only act which she had done by which the land could be alienated was her lease and the alienation by that lease was so restricted that it could have effect only when approved by the Secretary. Therefore, the condition on which alone the clause of the lease was to take effect never was fulfilled and the clause never became operative. Again, if all restrictions had been removed and if this clause had become lawful, valid and effective, its effect by virtue of the principle of relation would have been to have estopped Jennie Samuels and her heirs and those claiming under them with notice of the conditional lease from successfully assailing it. And the result is that the lease made by Jennie Samuels on December 5, 1914, and approved by the Secretary on October 21, 1915, was lawful and valid against all parties claiming under her or her heirs with notice that she had made such a lease.

Counsel for the plaintiff, however, say that, notwithstanding all this, it is entitled to prevail in this suit because it is a bona fide purchaser for value of the leases it owns without any notice of the lease of Jennie Samuels until after it had purchased and paid for the leases under which it asserts its right to this property. They urge that the lease made by Jennie Samuels was not filed or recorded in the office of the County Clerk or Register of Deeds of the county in which the land was situated until after the plaintiff had

made and paid for its leases, and had duly recorded them and the other evidences of its title from the heirs in the office of the County Clerk. This is conceded by the defendants. But the plaintiff's petition avers that on June 5, 1915, before the leases from the heirs under which the plaintiff claims were obtained, the lease of Jennie

Samuels was filed in the office of the United States Indian Agent, now the office of the Superintendent of the Five Civilized Tribes, Union Agency, at Muskogee, Oklahoma, under and pursuant to the provision of the Act of Congress of March 1, 1907, which declares that "the filing heretofore or hereafter of any lease in the office of the United States Indian Agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice", 34 Statutes 1026, and the defendants contend and the court below held that this filing charged the plaintiff and those under whom it claims with notice of that lease. Counsel for the plaintiff argue that this provision of the Act of Congress was either repealed or superseded by the admission of the state of Oklahoma into the Union, and by the provisions of the Enabling Act of Oklahoma, of the constitution and of the schedule to the constitution of that state which became effective November 16, 1907, a few months after the Act of Congress of March 1, 1907. This argument presents the second question in this case, the question whether or not the Act of March 1, 1907, was still in force when the plaintiff obtained its leases.

When the Act of March 1, 1907, was passed and when the Enabling Act, the Constitution of Oklahoma and the schedule to it took effect, there were in force in the Territory of Oklahoma and since have remained in force in the State of Oklahoma, these provisions with reference to the execution and record of instruments relating to real estate which may be found in Sections 1154 and 1155, Revised Laws of Oklahoma, 1910. "No deed, mortgage, contract, bond, lease or other instrument, relating to real estate other than a lease for a period not exceeding one year and accompanied by actual possession, shall be valid as against third persons unless acknowledged and recorded as herein provided".—Section 1154. "Every conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrances or creditors."—Section 1155.

The provisions of the Enabling Act, the constitution, and the Schedule to it invoked, together with the statutes just recited to nullify the provision of the Act of Congress in question are these: Section 1 of the Enabling Act provides: "That nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or to affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this

Act had never been passed". 34 Statutes at Large 267, Revised Laws of Oklahoma of 1910, page LXXIII.

Section 21 contains this clause: "And all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this Act or by the constitution of the State and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States". 34 Statutes at Large 277, 278, Revised Laws of Oklahoma, 1910, page LXXIII.

Section 2 of the Schedule to the Constitution of Oklahoma declares that: "All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union, which are not repugnant to this constitution, and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law". Revised Laws of Oklahoma 1910, page CXCIX.

But careful study of these provisions of the Statutes of the Enabling Act and of the Constitution of Oklahoma and its Schedule and a comparison of them, with that part of the Act of Congress of March 1, 1907, which declares that the filing of a lease with the Indian Agent shall be deemed constructive notice, fails to convince that they either have or were intended to have the effect of repealing or superseding that provision. In the first place none of them expressly or by the plain meaning of its terms repeals or modifies or limits its effect, and the legal presumption from this fact is that neither the United States nor the State intended so to do. In the second place the subject matter of the Indians, their lands, the allotment and distribution of those lands to the Indians in severalty, the leases, sales, deeds and disposition by the allottees of their lands, the restrictions upon their alienation thereof, the extent of the rights and privileges of their lessees and claimants to this land, were and had been for more than a century within the exclusive jurisdiction of the United States and beyond the jurisdiction of the States, except in cases where the United States had renounced or released its control, and the legal presumption, evidenced and sustained by Section 1 of the Enabling Act, was and is that Nation and State alike intended to maintain that relation and situation wherever they have not by the plain terms of their legislation disclosed a contrary purpose. And no legislation or action exhibiting such a purpose is perceived in the statutes, the Enabling Act, the Constitution or the Schedule, to which reference has been made.

Again, the portion of the Act of the United States of 1907 relating to the constructive notice given to subsequent purchasers and others, by the filing with the Indian Agent, of a lease of an allotment of Indian land, was special legislation, limited in its terms and effect to a single subject, leases of Indian lands and to a particular class of persons, those affected by such leases, while the statutes of Oklahoma upon this subject of the constructive notice resulting from the recordation of instruments relating to real estate, were

general in their nature, treating of all classes of such instruments and of all classes of persons affected thereby. It is a cardinal rule of the construction of statutes that specific legislation in relation to a particular class or subject is not affected by general legislation in regard to many classes or subjects, of which that covered by the specific legislation is one, unless it clearly appears that the general legislation is so repugnant to the special legislation that the legislators must be presumed to have intended thereby to modify or repeal it; but the special and the general legislation must stand together, the former as the law of the particular class or subject, and the latter as the general law upon other subjects or classes within its terms. *State v. Stoll*, 17 Wall. 425, 436; *Washington v. Miller*, 235, U. S. 422, 427, 428; *Harris v. Bell*, 250 Fed. 209, 216, * * * C. C. A. * * *; *Stoneberg v. Morgan*, 246 Fed. 98, 101, 158 C. C. A. 324; *Sweet v. United States*, 228 Fed. 421, 427, 143 C. C. A. 3; *Priddy v. Thompson*, 204 Fed. 955, 958, 959, 123 C. C. A. 277, 280, 281; *Christie Street Commission Co. v. United States*, 136, Fed. 326, 333, 69 C. C. A. 464, 471. If the portion of the Act of March 1, 1907, relating to the constructive notice result-

ing from the filing of a lease of an allotment of Indian land
81 and the provisions of Sections 1154 and 1155 of the Revised

Statutes of Oklahoma 1910 had been enacted by a legislative body of the same state they might have stood and have been enforced together under this rule. By so much the more should they and must they so stand and be enforced now that the one is the Act of the Nation which has general and exclusive jurisdiction of the subject and class of which it treats and the others are the Acts of the State which has jurisdiction over all similar subjects and classes, but none over this one.

In the opinion of this court the portion of the Act of March 1, 1907, which relates to the constructive notice given to subsequent purchasers and others by the filing of a lease made by an allottee of an allotment of Indian land made by the United States, was neither repealed, annulled or modified by the subsequent admission of Oklahoma into the Union, by the recordation statutes of the Territory or State found in Revised Laws of Oklahoma of 1910, Sections 1154 and 1155, by the Enabling Act, the Constitution or the Schedule to the Constitution of that State. And if upon an independent investigation of the questions in this case any doubt had remained, the clear, concise and conclusive opinion of the Supreme Court of Oklahoma in *Scioto Oil Co. v. O'Hern*, 169 Pac. 483 would have dispelled it.

Let the decree below be affirmed with costs against the appellant.

Filed March 24, 1919.

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1918.

Monday, March 24, 1919.

No. 5177.

ANCHOR OIL COMPANY, a Corporation, Appellant,

vs.

W. H. GRAY, F. D. McDONNELL, CHARLES EGAN, F. C. GIDDINGS
and GULF PIPE LINE COMPANY, a Corporation.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a corporation, have and recover against the Anchor Oil Company, a corporation, the sum of twenty dollars for their costs herein and have execution therefor.

March 24, 1919.

(Petition for Appeal to Supreme Court U. S. and Order Allowing Same.)

The above named plaintiff and appellant, Anchor Oil Company, a corporation, conceiving itself aggrieved by the decree and judgment entered on the 24th day of March, A. D. 1919, in the above entitled and numbered cause, does hereby appeal from said decree and said judgment to the Supreme Court of the United States, and prays that this its appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said decree and order
83 was made, duly authenticated, may be sent to the Supreme Court of the United States.

GEO. T. BROWN,
C. P. CHANAULT,

*Of Tulsa, Oklahoma, Attorneys for Plaintiff
and Appellant, Anchor Oil Company.*

Appeal to Supreme Court of the United States allowed this fourteenth day of June, 1919.

WALTER H. SANBORN,
*Senior United States Circuit Judge
for the Eighth Circuit.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 14, 1919.

(Assignment of Errors on Appeal to Supreme Court, U. S.)

Comes now the Anchor Oil Company, a Corporation of Tulsa, Oklahoma, plaintiff and appellant, named in the above entitled and numbered cause, by its attorneys Geo. T. Brown and C. P. Chenault, and says that the decree and judgment rendered in the above entitled and numbered cause, under date of March 24, 1919, by the United States Court of Appeals of the Eighth Circuit, is erroneous and against the just rights of said plaintiff, and that in said record and proceedings there is manifest error in the following respects and particulars, to wit:

I. That said Court erred in holding that the Secretary of the Interior had jurisdiction and authority to approve, after the death of the full blood Creek Indian, allottee, the oil and gas mining lease entered into between said allottee and the respondents prior to the death of said allottee.

II. Said Court erred in holding that the heirs of said deceased full blood Creek Indian, took the lands of said allottee subject to the unapproved oil and gas mining lease made by the allottee during her lifetime.

84 III. Said Court erred in holding that the Act of Congress of March 1, 1907, providing that "the filing heretofore or hereafter of any lease in the office of the United States Indian Agent, Union Agency, Muskogee Indian Territory, shall be deemed constructive notice," was not repealed and superseded by the Act of Congress authorizing the admission of the State of Oklahoma into the Union as a sovereign State, effective November 16, 1907.

IV. Said Court erred in holding that the recording laws of the State of Oklahoma with reference to the recording of instruments relating to real estate, did not apply to departmental oil and gas mining leases, after the formation of said State.

V. Said Court erred in holding that the filing of the oil and gas lease, claimed by Respondents, with the United States Indian Agent, Union Agency at Muskogee, Oklahoma, on the 5th day of January, 1915, was constructive notice thereof.

VI. Said Court erred in sustaining Respondents' Motion to dismiss Plaintiff's petition.

VII. Said Court erred in affirming the judgment of the District Court of the United States for the Eastern District of the State of Oklahoma.

VIII. Said Court erred in dismissing plaintiff's petition.

IX. Said Court erred in rendering judgment in favor of Respondents and against the Plaintiff.

Wherefore, the plaintiff prays that the order and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, be reversed, and that said Court be ordered to enter an order and judgment overruling the Respondents' motion to dismiss, and that said Court be further directed and ordered to re-instate said cause and the petition of the plaintiff so dismissed in said Court and in the United States Court for the Eastern District of Oklahoma.

GEO. T. BROWN,
C. P. CHANAULT,
Attorneys for Plaintiff.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Jun. 14, 1919.

85 (*Bond on Appeal to Supreme Court, U. S.*)

Know all men by these presents:

That we, Anchor Oil Company, a corporation, as Principal and H. M. Preston as Surety, both of Tulsa, Tulsa County, State of Oklahoma, are held and firmly bound into W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a Corporation, in the sum of Five Hundred (\$500.00) Dollars to be paid to the said W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a Corporation, for the payment of which well and truly to be made we bind ourselves and each of us, and our respective heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 11 day of June A. D. 1919.

The condition- of the above undertaking are as follows, to wit:

That, whereas, the above named principal Anchor Oil Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree and judgment rendered in the above entitled and numbered cause by the United States Circuit Court of Appeals for the Eighth Circuit, under date of March 24, 1919;

Now, therefore, if the above named principal, Anchor Oil Company, shall prosecute said appeal to effect and answer all costs if it fails to make its said plea and appeal good, then this obligation to be void, otherwise the same shall be and remain in full force, virtue and effect.

ANCHOR OIL CO.,
By P. A. MISERNAN,
Sec'y, Principal.
H. M. PRESTON,
Surety.

Approved:

WALTER H. SANBORN,
Senior U. S. Circuit Judge, Eighth Circuit.

Sealed and delivered, taken and acknowledged before me, the undersigned, Notary Public, within and for Tulsa County, Oklahoma, by the said Anchor Oil Company, a corporation and the said H. M.

Preston surety, each of whom acknowledged to me the same to have been executed as their free and voluntary act and deed, on this, the 11th day of June A. D. 1919.

[SEAL.]

W. C. CONNELLY,
Notary Public.

My Commission Expires April 17, 1920.

UNITED STATES OF AMERICA,
State of Oklahoma,
County of Tulsa, ss:

Be it remembered that before me the undersigned a Notary Public, duly commissioned and acting withing and for said County and State, on this 11 day of June A. D. 1919, personally appeared H. M. Preston of lawful age, who after being duly sworn on oath, states; that he is the surety named in the above and foregoing undertaking, and that he is worth the sum of Three Thousand (\$3,000.00) Dollars, over and above all his exemptions, debts and liabilities.

H. M. PRESTON.

Subscribed and sworn to before me this 11th day of June A. D. 1919.

[SEAL.]

W. C. CONNELLY,
Notary Public.

My Commission Expires April 17, 1920.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 14, 1919.

87 UNITED STATES OF AMERICA:

To W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a corporation, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the Anchor Oil Company, a corporation, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Senior United States Circuit Judge in and for the Eighth Circuit, this fourteenth day of June A. D. 1919.

WALTER H. SANBORN,
Senior United States Circuit
Judge for the Eighth Circuit.

UNITED STATES OF AMERICA,
State of Oklahoma,
County of Tulsa, ss:

We, the undersigned, Attorneys of Record, for the Respondents named in the above entitled and numbered cause, hereby accept service of the above and foregoing citation this, the 16th day of June A. D. 1919.

WEST, SHERMAN & DAVIDSON,
Attorneys for W. H. Gray, F. D. McDonnell,
Charles Egan and F. C. Giddings,
JAMES B. DIGGS,
Attorneys for Gulf Pipe Line Company.

[Endorsed:] No. 5177. Anchor Oil Company, a corporation, Appellant, vs. W. H. Gray et al. Citation on Appeal to Supreme Court, U. S. Filed Jun. 18, 1919. E. E. Koch, Clerk.

88

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause wherein the Anchor Oil Company, a corporation, was Appellant, and W. H. Gray, F. D. McDonnell, Charles Egan, F. C. Giddings and Gulf Pipe Line Company, a corporation, were Appellees. No. 5177, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed thereon is hereto attached and herewith returned.

I do further certify that on the twenty-eighth day of May, A. D. 1919, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the District Court of the United States for the Eastern District of Oklahoma.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth

Circuit, at office in the City of St. Louis, Missouri, this first day of July, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk of the United States
Circuit Court of Appeals for
the Eighth Circuit.*

Endorsed on cover: File No. 27,330. U. S. Circuit Court Appeals, 8th Circuit. Term No. 575. Anchor Oil Company, appellant, vs. W. H. Gray, F. D. McDonnell, Charles Egan et al. Filed October 20th, 1919. File No. 27,330.